

# Champion Briefs

November 2013

Public Forum Brief



**Resolved: The benefits of domestic surveillance by the NSA outweigh the harms.**

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These seven statements, while seemingly simple, represent the complex notion of what it means to advance students' understanding of the world around them, as is the purpose of educators.

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## Topic Analyses

## **Topic Analysis by Mark Allseits**

It is time for a change of pace from the debates that you have been having for the first two months of the year. This month will be featuring a topic that doesn't really apply to international relations, and might even be seen as a topic in which two sides will be running two different competing framework standards. The first topic of the year was a great topic for discussing theories of international relations, and this topic is another that stands out as a more concept based topic and not a numbers based topic. In my eyes, this topic has one very solid argument on each side. The NSA surveillance is probably effective in benefiting people's physical well being through its security impacts. However, the NSA surveillance has some major implications on the privacy of individuals in the United States. Thus, I think this topic will come down to who can better argue a framework that applies to their side of the debate.

While the Affirmative on this topic will probably be able to garner some substantial tangible impacts like increasing security and saving lives, the Negative will have a harder time, in my opinion, trying to garner impacts through a standard of utilitarianism, or doing the greatest good for the greatest number of people. If the Negative tries to engage the Affirmative in this debate, it will be an uphill battle just because of the disparity of topic literature of the efficacy of the NSA security systems saving lives. Thus, the Negative has to try and figure out a way to attack the affirmative without starting off on an uphill battle. The way through which the Negative can do that is by creating a competing weighing mechanism in the round. Standards are essentially the same thing as framework in the context of Public Forum Debate.

At this point in time in the Topic Analysis, I would usually guide you through a lesson of what utilitarianism and deontology are and how they are two competing interpretations that both have their own pitfalls and advantages, but Danny Rego just did a great job explaining the use of these philosophies in structuring Public Forum Debate arguments in his Champion Briefs op-ed, so I recommend you look there to for the specifics of the two philosophical views.<sup>1</sup>

Now that you have read, or should have read Danny Rego's explanation of the use of deontology and utilitarianism in Public Forum debate, you should be ready to understand how this applies to the topic at hand. While there may not be many harms to your physical security as a result of the NSA's domestic surveillance systems, there can be and are the abuses to individuals' right to privacy. This initially may not seem that this is a compelling argument but you can take it in one of two ways:

First, you should argue that deontology explains that it is never okay to have the federal government violate the rights of its constituents. This is a violation of individuals' autonomy and individuality by government oversights. Often times, deontology arguments are run in the context of slippery slope arguments. On a very basic level the argument goes something like this. If the government takes away my right to privacy and that isn't unconstitutional, then what prohibits the government from doing "x, y, and z"? But, a good debater will never stop there. He or she will never just try and win their interpretation and their interpretation alone. The most successful debaters are the debaters who can win their own standards and their opponents' standard.

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<sup>1</sup> <https://championbriefs.com/philosophy-in-public-forum-debate.php>

The second thing that you should do is try and give the judge some reasons that you are solving for or meeting your opponents' standard as well. Thus, if you are running deontology and your opponents' are running utilitarianism, there are multiple debates going on in the judge's mind. There is "who is winning deontology", "who is winning utilitarianism", and "who is winning that either deontology or utilitarianism is the most important standard". If you can win the first two debates of utilitarianism and deontology, then you don't need to even show that judge that the third debate about which standard is more important. Even if you feel that you are winning the debates through both standards, it is still important to show your judge that the initial standard that you are advocating for is still most important, because the judge might not be thinking that you are winning both standards. Going for both standards in some circumstances might harm you. For example, if you are getting beat on the utilitarianism debate and there is no way that you can beat your opponent on that argument, but you also know that there is no way that they can beat you on deontology, that is when you stay true to your argument and spend the majority of your speech time convincing your judge that deontology is the most important because if you don't then you have lost the round. This is very important. You can never lose your standard for the round, because that gives the judge a very big reason not to vote for you. Even if you are winning your opponents standard, if they meet your standard better than you do, the judge has no clear place to sign the ballot. That is why it is important to always win your standard first and then try and win your opponents' standard.

Like Danny Rego talked about in his blog post, a lot of Public Forum Debate judges and Public Forum Debate competitors get chills from hearing about philosophy in debate. You may

even get a ballot that says something along the lines of “I don’t believe that Public Forum Debate is the proper arena for philosophy in debate. Your arguments about deontology at the beginning of the round seemed to hold no weight compared to your opponents case. However, you won the argument that deontology functions before utilitarianism. I vote for you but I regret it”. The point of this was not to tell you “don’t adapt to your judges”, but rather that even a traditional Public Forum Debate judge can vote for an argument that may seem like it isn’t something that should exist in the Public Forum Debate community.

The last thing that I think is very important to talk about is judge adaption. This topic area is a very opinionated one and the majority of the evidence and media reporting is very opinionated on this topic, I would too argue that so are your judges. Regardless of whether or not you believe a position, you are stuck advocating it. On the other hand, if you are a judge and there is a position that you like, that is just a disincentive for you to vote for that position before the round begins. I know that this is the part of debate that we all don’t like, but it is something that is inherently engrained into the nature of debate tournaments and is something that no elixir could even rectify.

So how can you adapt to your judges potential side bias?

First, if your tournament has a Warm Room or is posting the results of each round before the next round starts then you should go follow your judge on the Warm Room and see which direction he or she has been voting at the tournament. Obviously, if it is round one and you are going into round two and you know your judge has voted Affirmative once, that doesn’t mean

that you should automatically flip Affirmative. Use some logic; at that point in the tournament there are no other rounds to compare it to in order to see if your judge has a particular side bias. However, if you are going into elimination rounds or even round six, and you see that your judge has judged five rounds and voted for the Affirmative all five rounds, then there is a pretty good chance that your judge has a side bias for the affirmative.

Second, you should network with people at tournaments and obviously only network with the people who you trust. This can be a huge advantage to you if you get to know the judge personally or if you get to know other debaters because you can start to learn which judges have which opinions on which issues. Because the NSA is probably reading this topic analysis, and with my luck it will get leaked, I am going to refrain from going into a list of the different political convictions of certain judges, but as time goes on and you start to network with other judges and competitors you will start to figure your judges out better.

Best of luck to you all on this topic!

### **About Mark Allseits**

Mark Allseits attended and competed for Pine View School and graduated in May 2013. He competed in Public Forum Debate during his four-year forensics career. He was the champion of the 2013 Tournament of Champions and the Yale Invitational, earning Top Speaker awards at both tournaments. Additionally, he placed in the top four at the NCFL Grand National Tournament in his junior year and the Florida State Championship in his junior and senior years. Additionally, Mark acted as the coach of Pine View's debate team, working with over 50 Public Form Debaters to build a successful program. Mark is currently a freshman at Western Kentucky University, majoring in political science and competing in collegiate Lincoln Douglas debate.



## **Topic Analysis by Grant Sinnott**

This resolution - the benefits of domestic surveillance by the NSA outweigh the harms - has been brought into question because of some of the ways in which NSA goes about collecting data, which were recently leaked. It seems that the National Security Agency is willing to scoop up as much Internet Traffic as possible. They are willing to install "backdoors" into encryption systems, so information can be more easily obtained. These practices, however, probably operate in some sort of legal grey area, and the public certainly was not aware of just how far the NSA's reach extended. They were willing to collaborate with corporations to enhance their access to all sorts of forms of communication. In fact, it seems that the NSA could access almost any sort of conversation they truly wanted to get their hands on.

These sort of powers seem to erode any sort of privacy that one may think they have. It seems to suggest that the government doesn't really need a warrant to listen, but there may be hope yet. The purpose of listening to these conversations of course is proclaimed to be to stop terrorism and attacks on the homeland. This seems like a most reasonable goal, and one that in our current global situation may even have some necessity. The question is of course how much privacy are we willing to trade for proclaimed protection. It seems that at its course this debate necessitates a look at trade of between rights and security.

The question of the resolution asks if it is worth it to trade liberties for safety; this is a debate with no answer. However, there are definitely a lot of lines of thought on this topic and understanding them will help advance some of your more general positions moving forward.

Some people would claim that it is the government's duty to protect its citizens no matter what, that safety is a perquisite to that state existing or functioning. Others would claim that the state needs to provide rights to its citizens, or they will never truly be safe; so the government has already failed its purpose in existing. The analogy commonly used to show how badly practices that claim to protect the "common good" can go is Nazi Germany, where we saw that people were willingly to do atrocious things all in the name of security; if you think that's too far from home and that we could never reach a point in the United States, all you have to do is look at the Japanese Internment camps or the practice of slavery in America. Sure, they might be things we have move forward from and overcome, but they still lurch in America's history. In the post 9-11 world, it is not hard to see, for example, how Muslims and others minorities are discriminated against as targets. It's a subtle shift in mindset that can lead to some really bad things. These sorts of changes can slide quickly into some really harsh realities, and that's why some people would argue that even small infringements could lead to us sliding down a very slippery slope.

The most effective way to make these sorts of arguments is to explain them in depth with examples. This is not an argument you can win without serious time investment in my mind. Although certain judges will be looking for these arguments to be made, it is still important that you are able to explain why protecting rights matters, why it is important that the government is not dipping its hands in these sorts of matters, and why these sorts of actions could spell disaster for the fundamental ideals of our society. I honestly think it is important to use all the political hype and exaggeration. Almost everyone has a preconceived notion about this issue so you can use that to your advantage to pick up a couple extra ballots.

On the flip side of this coin, it seems that the affirmative needs to cut down on political rhetoric and cut to the heart of why this program exists. It is important to explain two things as an affirmative. First, every program has examples of it being misused or abused, but that these examples do not show how the program generally operates. Second, it is important that the affirmative changes people's conception of what and how much the National Security Agency can actually do. For example, the NSA isn't really wire-tapping. They are collecting metadata during phone calls. This targeted data is mathematical, showing the length of the call and the numbers of the phones involved in the phones calls. It does not allow them to listen to what is verbally being transmuted, a key distinction to make. These programs are, also, congressionally and judicially supervised in some capacity. When Verizon was asked to give up its data by the government, the FBI had to ask permission from the court. The entire United States Senate, also, was aware of the program and has been informed about. This suggests that it would theoretically have the approval of the people, because we elect our officials into office and they were okay with it. One last note on how to cut through some of the ideas that these programs have zero accountability, these acts all need to be reauthorized, which means the court has the review and authorize surveillance requests.

It is important to keep some these issues in your mind clear but more importantly clear in the judge's mind. People should use cross fire to quickly remove any notions that government has unbridled power, and the negative should be armed with examples of complete lack of accountability by the government.

At the core of this debate, it will become pertinent to be able to weigh and explain why intangible things like rights and liberties can take precedence over things like the lives of citizens. There are several arguments one can make here. First, it is important to think of what life is like without rights. If you are a slave to someone else for example, it would seem you are really not living. There is, thus, an argument to be made that a perquisite to living is having rights. Of course on the flip side, there is an argument to be made that you need to be alive to even enjoy these rights. This is a sort of chicken and egg debate, but it gives you one line of thought. Second, rights were created for a reason. Those rights "negative rights" that protect us from the government have a specific purpose: To stop the government from overstepping its bounds and abusing its power. These abuses of power lead to very real tangible impacts that the judge can understand, so there is an argument to be made that protecting rights also saves lives.

Outside of this very abstract debate, though, there are very real ways that this resolution can be analyzed. I think these can be the key to the affirmative ballots, but also might offer opportunities to the negative. One position for the affirmative will center on the potential for terrorism and the damage that it can do. This position of course requires you to be able to show that these data mining tactics actually generate useful intelligence. The negative could argue that because the NSA's techniques were revealed it led to increase secrecy in the communication of terrorists, which will make it harder for us to track and crack down on terrorism.

This debate to me does not seem like a fun one, it will be a lot of opinions. A topic with very few facts or statistics, but this does open up the door for a bigger picture story telling sort of

style of debate. I think ultimately the winners on this topic need to be able to tell a story and know their story, if they want to consistently win rounds.

Good luck this month.

### About Grant Sinnott

Grant Sinnott was a Public Forum debater for Lake Highland Preparatory in Florida and graduated in May 2013. He was the Champion of the 2013 NFL National Tournament, the Sunvitational, Sunvitational Round Robin, and the Florida State Tournament. Additionally, he was a finalist at the Tournament of Champions, the Glenbrooks, and Emory. Throughout his career, he amassed 10 TOC bids among other achievements. Grant will be attending the University of Florida beginning this Fall.

**Topic Analysis by Alex Pollock**

Hello debaters (and the NSA if you are peeking at this). If you ever doubted the power of one person, then ponder this: had Edward Snowden not committed his heroic / controversial / criminal / treasonous action by revealing that the NSA conducts surveillance on *everyone* then this topic area would probably not even have been considered, let alone chosen, as the NFL's November Resolution. That being said, those four adjectives I just used to describe Snowden's actions reflect everyone's feelings about this issue. Libertarians and Liberal Democrats feel that he did the nation a service by making everyone aware of a policy carried out by their government that they view as a grave injustice and a violation of their rights. Neo-Conservatives and Tea Partiers think him a traitor deserving of the harshest punishment because he threatened U.S. National Security. The moderates on both sides think him a criminal for fleeing capture and arrest, but are not certain he has committed treason. Then there are those who are really unsure of what to think; they view Snowden's actions as controversial, because they are unable to decide on what the proper balance should be between liberty and security. These four groups of people will all be in your judging pool and these same four groups of people will all have differing opinion on this resolution's validity. It is critical to understand that unlike the previous resolution about nuclear proliferation where some judges were unclear about what the resolution was referring to or what is topical and is non-topical, judges will have more preconceived notions about this topic. Judges will also understand this resolution more easily because it is very explicit in what it asks the debaters to contest. We'll talk more about judging later, but for now let's jump into this topic.

Resolved: The benefits of domestic surveillance by the NSA outweigh the harms. Unlike the previous resolution, which left room for teams to shift the focus of the debate, this month the NFL has prevented teams from interpreting the resolution in creative ways. It is very straightforward in terms of its wording and what it is asking you to analyze. The first idea that should jump out at you is that the resolution is asking for a cost benefit analysis, not a justification based or a “should” based question. What this means is that impact weighing will be **extremely** important on this topic; you will not be able to get away with the common framework from the Sept / October topic of “if we prove it works in one scenario then it is justified”. You’ll have to look at the resolution holistically and evaluate all aspects of NSA domestic surveillance. Don’t nitpick at specific NSA programs / activities and then use blippy impacts from these obscure programs. Instead of looking at the specific programs, I would examine whether domestic surveillance in general in the status quo is a beneficial activity because it creates a less muddled round and will be easy for judges to evaluate. Another option is looking at the efficacy of surveillance in the status quo. Do not underestimate the harm of opportunity costs because if we are violating rights to facilitate an inefficient anti-terror program when we could be implementing another system that is more effective, less costly, and results in less privacy violations then there is a clear harm stemming from surveillance. I also think it is important to outline what the NSA is actually doing in the status quo to the judges. Without a doubt, they are looking at emails, social networks, and collecting meta-data on phone calls, but there is also unclear evidence that they may use cell phones that aren’t in use to spy on people and listen in on face to face conversations. Also remember the resolution is about “domestic” surveillance, so any spying that the NSA does abroad is non-topical.

As I mentioned before weighing will be essential to winning rounds on this topic. It is impossible to create an empirical happy medium between liberty and security. Ron Paul, as an example, very clearly states that the Government should not violate privacy and liberty, in an attempt to preserve security. Conversely, both Presidents Bush and Obama believe that some rights are worth violating if it keeps people safe and they illustrate this through their policies. The question then becomes: how do you explain what this balance should be to your judge, and how an imbalance creates an impact? What I mean by imbalance is a situation where our security is far-reaching and intrusive at the expense of our rights or where our rights are preserved at the expense of our security. You need to tell the judge where the balance is, and why that should matter to them. Why should they care if the government is reading our emails if the odds of being killed in a terrorist attack are lowered because of the surveillance? On the other hand, are all of these invasions of privacy really justified when we can prevent terrorism through other mechanisms? These are the kind of questions you need to be posing (and answering) to your judge.

Liberty and Security are so hard to compare because they are unquantifiable. Organizations such as Freedomhouse declare a “degree of freedom” ranking for the U.S., as do other groups, but these are not true indications of any real status of freedom. Do people really care if the US has moved from 12<sup>th</sup> to 14<sup>th</sup>, or do they care more about the specific rights violations that occur? Alternatively, security may be measured by how many lives are lost but this is not an accurate measure as there is no way to determine if the lives lost were from holes in our security. This measure isn’t directly attributable to any action that the NSA has taken or may take in the future. For this reason, I think a better strategy is to focus on a threat calculus. For example, we all just sat through two months of listening to nuclear terrorism arguments and their



probability; use that to your advantage. If the absence of the NSA's domestic surveillance increases the probability of a nuclear terrorist attack, then that be a significant benefit coming out of NSA surveillance. This strategy has the potential to work well but be careful not to conflate justification with cost-benefit analysis. The threat may be reduced (and yes that is a benefit), but you also need to effectively answer the harms that Con teams will show because you need to outweigh, not justify an action. Pro teams should be familiar with what the NSA actually does; this is a great opportunity to talk about specific actions during cross fire.

Security may be a vague issue to wrap your head around, but rights and liberty are even more abstract. This is where philosophy can come into play in the round. The two most common philosophical ideas espoused in Public Forum are deontology and utilitarianism. Utilitarianism deals with the end results of an action, whereas deontology looks at the means by which you attempt to achieve that end result, making each of these directly applicable to this resolution that, at its core, asks if the means or the ends should be prioritized. Con teams can argue that the NSA's domestic surveillance policy violates deontology by violating individual rights in order to achieve the ends. Pro teams can argue that utilitarianism is preserved by the NSA's domestic surveillance policy because they maximize good by preventing a potential terrorist attack.

The final issue I want to discuss is how to understand your judge's views. When 9/11 happened, I was 7 years old and in the second grade. That means that current freshman and sophomore debaters were around 2 or 3 years old, and probably have little to no memory of what transpired on that day. Regardless of your political views, if you remember 9/11 you will remember that it was one of the scariest days any person living in the United States has ever experienced. Sometimes I think that those of us who were too young to remember it or too young

to appreciate it for what it was forget that our world was forever changed on that day. The reason I am telling you this is because the vast majority of your judges remember exactly where they were and what they were doing when they found out about the attack. A lack of security resonates in a different way with someone who vividly remembers 9/11 and I think that is something you need to take into account when arguing both sides. Unfortunately, this might make it harder for Con to win some rounds if Pro can effectively show that NSA surveillance can be prevent another tragedy like 9/11; it is equally as important to not shrug off the threat of a terrorist attack in front of a judge who remembers that day. Con teams should argue that there needs to be a more reasonable way to preserve security, not that we don't need security.

This topic promises to feature some interesting debates but remember to weigh the arguments effectively, not just throw ideas out there. One thing I am certain of is that the debate community has the ability to change minds with this topic. I firmly believe that some people will have their personal opinions about this issue altered by listening to arguments on this topic. That is what debate is meant to be at its core: educational. Good luck this month!

### **About Alex Pollock**

Alex Pollock attended and competed for Boca Raton Community High School and graduated in May 2012. During his debate career, he was a semifinalist at the Nova Titan, a quarterfinalist at University of Florida's Bluekey Debate Tournament, the Sunvitational, the Villager Invitational, and the Florida State Championship. He also reached deep break rounds at Harvard, Emory, and the Crestian Classic. Additionally, he was named the top speaker at the University of Florida's Bluekey tournament and 5th speaker at Harvard. As a first year out Public Forum coach, Alex coached the 2013 TOC Champions. Alex is currently a sophomore at The George Washington University where he is studying political science and economics.

# Champion Briefs

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General  
Information

## **General Information**

**Resolved:** The benefits of domestic surveillance by the NSA outweigh the harms.

**Foreword:** We, at Champion Briefs, feel that having deep knowledge about a topic is just as valuable as formulating the right arguments. Having general background knowledge about the topic area helps debaters form more coherent arguments from their breadth of knowledge. As such, we have compiled general information on the key concepts and general areas that we feel will best suit you for in- and out-of-round use. Any strong strategy or argument must be built from a strong foundation of information; we hope that you will utilize this section to help build that foundation.

**Domestic Surveillance Programs**

Call Data Collection: “First, the government convinced the major telecommunications companies in the U.S., including AT&T, MCI, and Sprint, to hand over the ‘call-detail records’ of their customers. According to an investigation by *USA Today*, this included ‘customers’ names, street addresses, and other personal information.’ In addition, the government received ‘detailed records of calls they made—across town or across the country—to family members, co-workers, business contacts and others.’

A person familiar with the matter told *USA Today* that the agency's goal was ‘to create a database of every call ever made’ within the nation's borders. All of this was done without a warrant or any judicial oversight” (“How the NSA’s...”).

“Second, the same telecommunications companies also allowed the NSA to install sophisticated communications surveillance equipment in secret rooms at key telecommunications facilities around the country. This equipment gave the NSA unfettered access to large streams of domestic and international communications in real time—what amounted to at least 1.7 billion emails a day, according to the Washington Post. The NSA could then data mine and analyze this traffic for suspicious key words, patterns and connections. Again, all of this was done without a warrant in violation of federal law and the Constitution” (“How the NSA’s...”).

Reach of the NSA: “The NSA has the ability to request access to data streams from providers that make up 75 percent of U.S. internet traffic, through first focusing on a certain “area of interest” in their request to the telecommunications company in question, then using “strong selectors” to look through not only information about who is sending the data but the content of the data itself. Companies are compelled to respond to these requests through court orders handed down from the FISA Court, which has been at times criticized for rarely rejecting government requests.

The breadth of access to Americans' data is made possible through relationships with U.S. telecommunications companies and hardware that tech companies provide. That level of access has at times worried internet providers, some of whom have limited the government to only tapping 'clearly foreign' data streams. 'Somebody should enunciate a rule,' a person familiar with the legal process between the government and tech companies said to the WSJ, making clear that the discussions between the two over just what the law allows have 'been going on for some years'" (Brown).

Prism: "PRISM is not an undisclosed collection or data mining program. It is an internal government computer system used to facilitate the government's statutorily authorized collection of foreign intelligence information from electronic communication service providers under court supervision, as authorized by Section 702 of the Foreign Intelligence Surveillance Act (FISA) (50 U.S.C. § 1881a). This authority was created by the Congress and has been widely known and publicly discussed since its inception in 2008. Under Section 702 of FISA, the United States Government does not unilaterally obtain information from the servers of U.S. electronic communication service providers. All such information is obtained with FISA Court approval and with the knowledge of the provider based upon a written directive from the Attorney General and the Director of National Intelligence. In short, Section 702 facilitates the targeted acquisition of foreign intelligence information concerning foreign targets located outside the United States under court oversight. Service providers supply information to the Government when they are lawfully required to do so. The Government cannot target anyone under the court-approved procedures for Section 702 collection unless there is an appropriate, and documented, foreign intelligence purpose for the acquisition (such as for the prevention of terrorism, hostile cyber activities, or nuclear proliferation) and the foreign target is reasonably believed to be outside the United States. We cannot target even foreign persons overseas without a valid foreign intelligence purpose. In addition, Section 702 cannot be used to intentionally target any U.S. citizen, or any other U.S. person, or to intentionally target any person known to be in the United

States. Likewise, Section 702 cannot be used to target a person outside the United States if the purpose is to acquire information from a person inside the United States. Finally, the notion that Section 702 activities are not subject to internal and external oversight is similarly incorrect. Collection of intelligence information under Section 702 is subject to an extensive oversight regime, incorporating reviews by the Executive, Legislative and Judicial branches” (“Facts on the Collection...”).

### Equipment Used

Fiber Optics Splitters: “when you send an email or otherwise use the internet, the data travels from your computer, through telecommunication companies' wires and fiber optics networks, to your intended recipient. **To intercept these communications, the government installed devices known as “fiber-optic splitters”** in many of the main telecommunication junction points in the United States (like the AT&T facility in San Francisco). These splitters **make exact copies of the data passing through them:** then, one stream is directed to the government, while the other stream is directed to the intended recipients” (“How the NSA’s...”).

Narus Semantic Traffic Analyzer: The Klein documents reveal the specific equipment installed at the AT&T facility and the processing power of the equipment within the secret rooms. One type of machine installed is a Narus Semantic Traffic Analyzer, a powerful tool for deep packet inspection. Narus has continually refined their capabilities and—as of the mid-2000s—each Narus machine was **capable of analyzing 10 gigabits of IP packets, and 2.5 gigabits of web traffic or email, per second.** It is likely even more powerful today. The Narus machine can **then reconstruct the information transmitted through the network and forward the communications to a central location** for storage and analysis” (“How the NSA’s...”).

Data Storage Facility in Utah: “In April 2012, long-time national security author James Bamford reported NSA is spending \$2 billion to construct a data center in a remote part of Utah to house the information it has been collecting for the past decade. ‘Flowing through its servers

and routers and stored in near-bottomless databases,’ Bamford wrote, ‘will be all forms of communication, including the complete contents of private emails, cell phone calls, and Google searches, as well as all sorts of personal data trails—parking receipts, travel itineraries, bookstore purchases, and other digital ‘pocket litter.’” The Utah data center will be fully operational in September 2013” (“How the NSA’s...”).

Drone Surveillance: “Congress passed – and President Obama is expected to sign – House Resolution 658, the ‘Federal Aviation Administration Air Transportation Modernization and Safety Improvement Act,’ which would, in part, allow domestic use of aerial drone spy planes. HR 658 was sent to the President on February 8. The resolution has sparked opposition from privacy advocates who claim employing drones for domestic surveillance violates the Fourth Amendment of the U.S. Constitution” (Artz).

“‘The FAA has tried to restrict [drones], but there is a lot of demand from Congress, the drone industry and law enforcement to speed up their deployment,’ Hill said. ‘Congress just funded them to the tune of \$63 billion and tasked the FAA to work out how drones will be used commercially before 2015.’ Battery-powered drones can stay in the air between 15 minutes to 30 minutes, with some having the capability of staying airborne for up to an hour-and-a-half. The bigger drones, such as those employed by the National Aeronautics and Space Administration, can fly nonstop for 36 hours” (Artz).

### **Success of Domestic Surveillance**

“‘Intelligence officials said Tuesday that the government’s sweeping surveillance efforts have helped thwart ‘potential terrorist events’ more than 50 times since the Sept. 11, 2001 attacks, and the officials detailed two new examples to illustrate the utility of the programs. In testimony before the House Intelligence Committee on Tuesday, officials cited a nascent plot to blow up the New York Stock Exchange and a case involving an individual providing financial support to an overseas terrorist group.



‘In recent years, these programs, together with other intelligence, have protected the U.S. and our allies from terrorist threats across the globe to include helping prevent the terrorist -- the potential terrorist events over 50 times since 9/11,’ National Security Agency Director Gen. Keith Alexander told the committee. He said at least 10 of the plots targeted the United States” (Sullivan).

### **Legal Precedents**

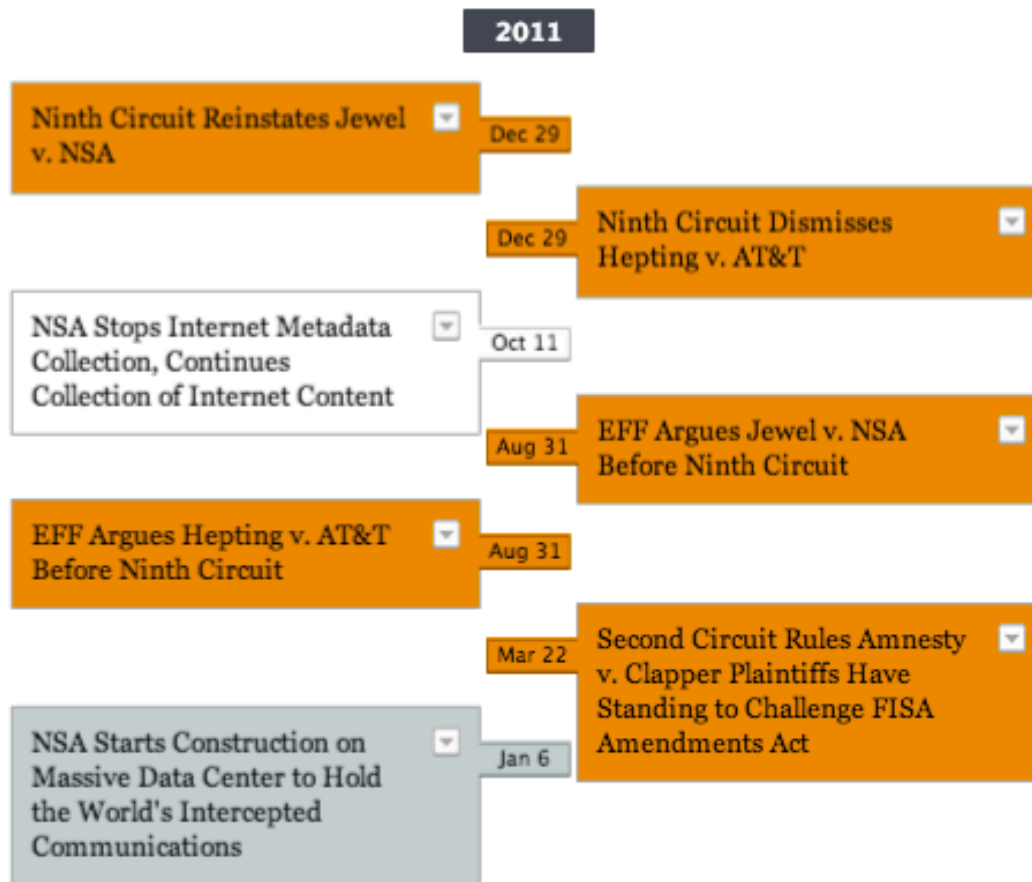
“Civil libertarians routinely question whether government surveillance programs violate the Fourth Amendment to the U.S. Constitution, which states: ‘The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.’ Many often point to a 1972 Supreme Court case, **United States v. United States District Court** (referred to as the ‘Keith’ case) involving a plot to blow up a CIA office. The court ruled that the executive branch, even when issues of national security are at stake, has no authority to spy on U.S. citizens on U.S. soil without a warrant. (However, past administrations have said this decision does not involve communications with foreign entities.) Some legal scholars have called for **greater transparency** in the laws governing domestic surveillance activities. Harvard Law School professor Noah Feldman writes that in requiring Verizon to hand over phone records to the NSA, ‘[FISC] appears to have applied the broadest possible reading of [Section 215 of the Patriot Act.]’ While this reading may be correct, he says, the fact that the court's interpretation is classified ‘runs counter to the most basic principles of democracy and the rule of law’” (Masters).

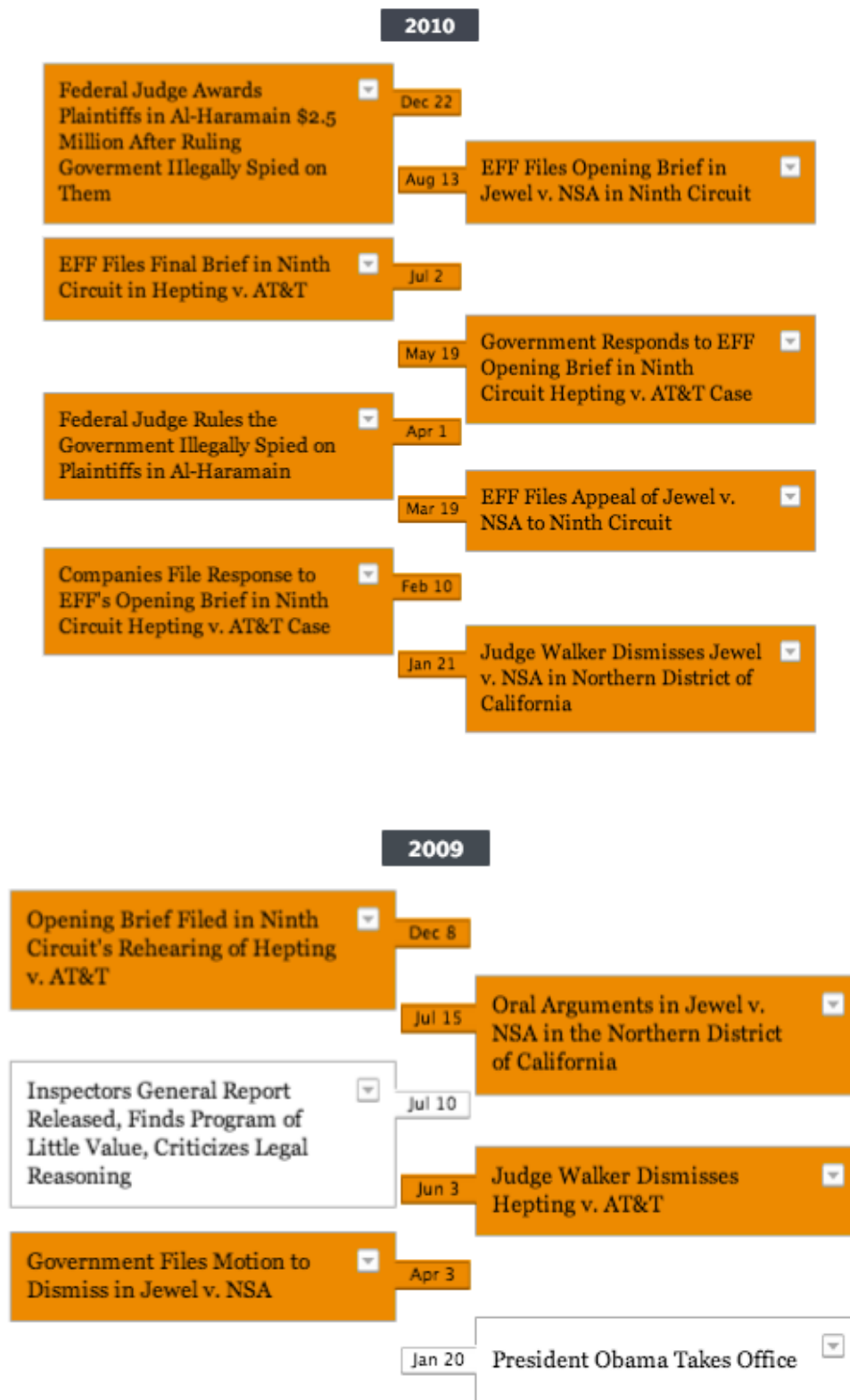
### **Timeline of Domestic Spying**

Event	Date
Government Releases FISA Court Legal Justification for Mass Spying Using Section 215	Sep 17
Office of the Director of National Intelligence Releases FISA Court Decision Detailing NSA's Violation of the Fourth Amendment	Aug 21
Wall Street Journal Reports on "Upstream" Collection--Key Issue in EFF's NSA Spying Cases	Aug 20
Washington Post Reveals NSA Internal Audit Showing Thousands of Violations	Aug 15
Office of the Director of National Intelligence Releases Documents Right Before Senate Hearing	Jul 31
House Judiciary Committee Rails Witnesses About NSA Spying	Jul 17
Federal Judge Allows Jewell v. NSA, EFF's NSA Mass Spying Case, to Proceed	Jul 8
Government Releases FISA Court Opinions in Response to EFF Lawsuit	Sep 10
White House Unveils New Tumblr to Release Documents: IConTheRecord	Aug 21
Chief Judge of FISA Court Says Court is Unable to Oversee Spying	Aug 15
White House Releases Supposed Legal Justification for section 215 of the PATRIOT Act	Aug 9
Senate Judiciary Committee Holds Hearing On NSA Spying	Jul 31
EFF Files New Lawsuit Challenging Spying: First Unitarian Church v. NSA	Jul 16

	Jun 27	The Guardian releases Draft NSA Inspector General Report Detailing Complete History of Domestic NSA Spying	
Department of Justice Confirms NSA Does Not Need Court Order Everytime it Searches Databases of Americans' Calling Information	Jun 18		
	Jun 15	Washington Post Reveals Names of Programs Alleged In EFF Lawsuits	
Director of the Federal Bureau of Investigation Testifies in Front of House Judiciary Committee	Jun 15		
	Jun 12	In Senate Appropriations Committee Hearing, General Alexander Gets Grilled on Domestic Spying	
ACLU Files New Lawsuit Against NSA Spying	Jun 11		
	Jun 9	NSA Tool to Record and Analyze Spying Revealed	
In Light of Leaks, Government Asks For More Time in Jewel v. NSA	Jun 7		
	Jun 7	President Obama Comments On Dragnet Spying By NSA	
Director of National Intelligence General Clapper Declassifies Parts of Dragnet Spying	Jun 6		
	Jun 6	PRISM Program Revealed: NSA Tapping Into Internet Companies' Systems, Mass Collecting User Data	
Secret Court Order Revealing Spying of All US Verizon Calls Leaked	Jun 5		
	Jun 3	Center for Constitutional Rights (CCR) v. Obama Dismissed	
Supreme Court Dismisses ACLU's Suit Against the Spying, Clapper v. Amnesty International	Feb 26		









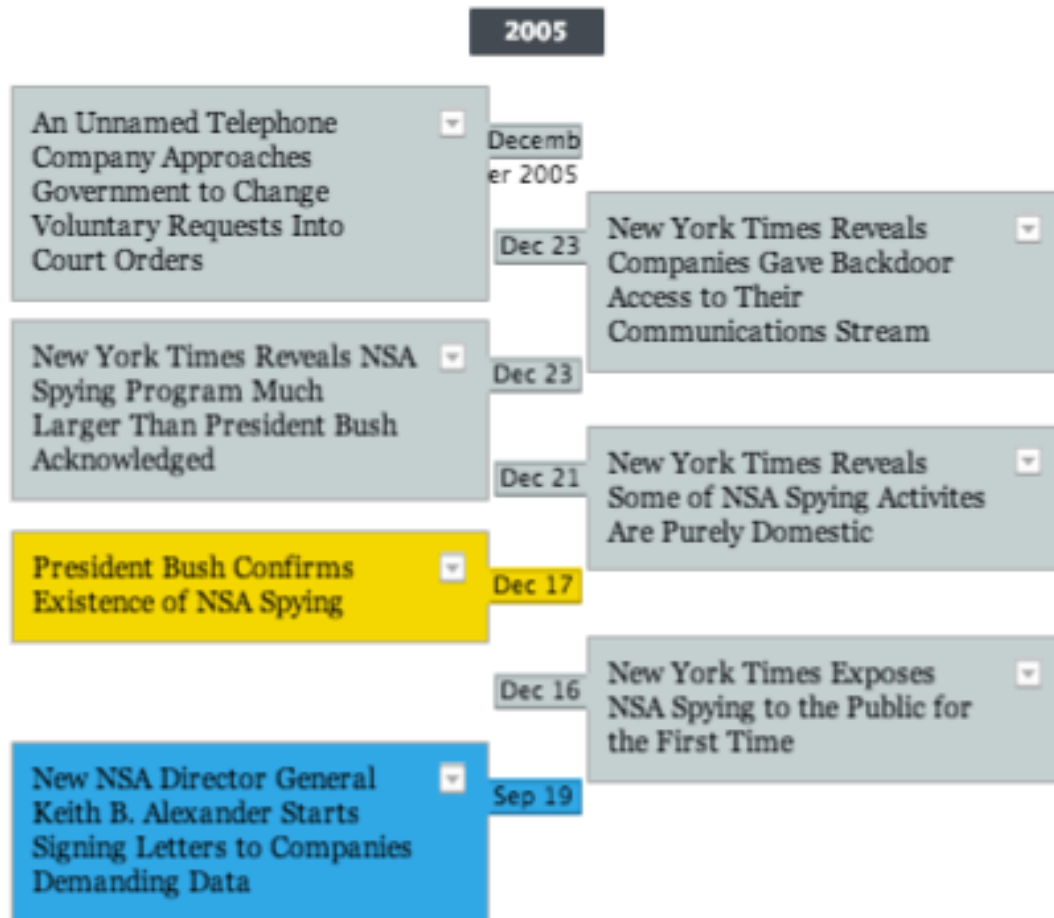


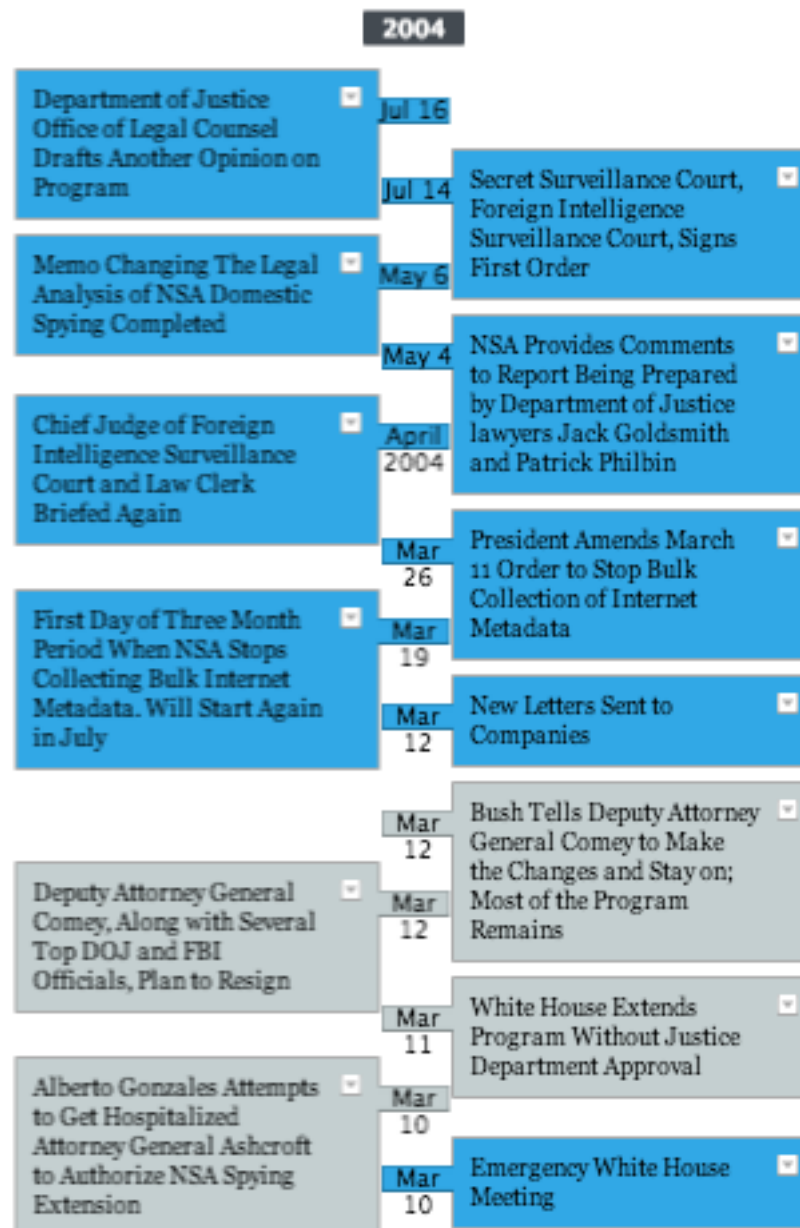




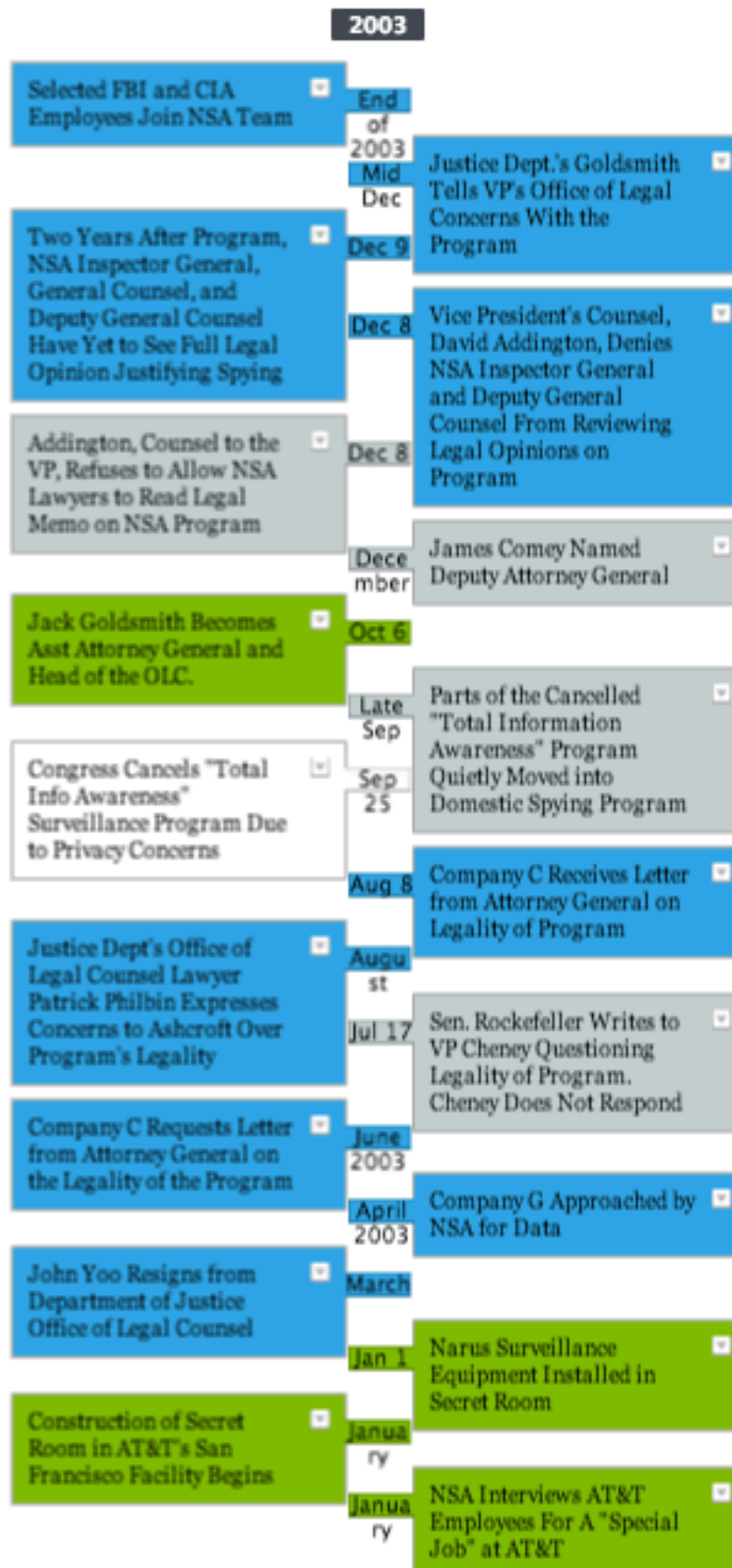






















("Timeline of NSA Domestic Spying").

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# Champion Briefs

November 2013

Public Forum Brief



Possible  
Frameworks

## Possible Frameworks

### Pro Frameworks

**Framework:** The government exists to protect and maximize the social welfare of the governed. As such, the resolution should be evaluated based upon the success of the government's attempt to maximize the welfare of society as a whole. Moreover, to best evaluate this standard you should prefer real world impacts to theoretical or hypothetical ones because it allows us to actually compare the benefits and costs.

**Explanation:** This framework serves as a weighing mechanism that would be best placed at the top of your case. The idea is that the judge should evaluate the round based upon whether the government is benefiting all people of society over theoretical impacts like violation of right to privacy. This framework works best with arguments that discuss the success of domestic surveillance programs as well as why they are successful. This framework allows you to narrow the round down to tangible benefit and harms to society, and when combined with the correct statistics would make for a devastating position.

**Answer:** The way to beat this framework depends on what kind of a case you are choosing to run. If you are running an argument that examines rights abuses, than you respond to this framework by talking about how the government creates contracts like the Constitution to protect the rights of all citizens, and these cannot be impinged upon. The government cannot take actions that trample on the rights of all or of few to provide a supposed benefit to society. If you are using a case that talks about actual harms from these programs, you are can accept the framework and just beat the arguments under it because you would win that cost benefit analysis. If you are running a combined advocacy, you can respond to the second part of the framework about theoretical impacts by talking about why rights violations are the greatest harm in the round, and then beat them on the cost benefit analysis.

**Framework:** The government exists to protect the rights and security of all citizens, and as such must take actions that maximize this goal for the most amounts of people. Because we do not know where threats of terrorist attacks come and because of the massive impact they can play within a society, preventing terrorism should be the greatest impact in the round. If we can show you that we have or can prevent terrorism than you should vote pro.

**Explanation:** This type of framework would work best as an overview to the round at the beginning of either the rebuttal speech or summary speech to create a funnel to narrow down the round. This type of framework makes it clear to the judge that this round should be evaluated on your terms while at the same time lowering your burden of proof to win the round. It works best in these speeches because you will most likely be talking about the success of these programs and it can be used to respond to the entire Neg advocacy.

**Answer:** The best response to this argument is that risking or infringing upon rights of all people to protect from the threat of terrorism is no different than threatening a society with the fear of an attack because you impede on their ability to live. Debaters could also use this framework to win the round if your case lends itself to be in-line with this framework.

**Framework:** At the end of the day, you should prefer impacts that save lives or allow for a better quality of life over the ability to exercise one's rights or decreasing the welfare of society because people need to be alive in order to express these rights. As such, the government should seek to maximize the amount of life in fulfill its obligations to the people who consent to be governed in exchange for security.

**Explanation:** This framework works as a weighing mechanism at the top of the Summary speech because it allows you give greater weight to your arguments over your opponent's by limiting the strength of rights violations and increasing the impact of attempting to increase the welfare of the society. Moreover, those who consented to be governed argument allow you to justify the rights violations in questions and make them permissible actions as opposed to violations.

**Answer:** You respond to this type of argumentation by beating back the internal link. In this case, domestic surveillance being successful is key to the rest of the framework working because if there is no perceived benefit than the harms remain harms, which gives you strong impacts to extend in the last speech. Moreover, you can discuss the why the government overstepped the boundaries and infringed upon certain guaranteed protected rights of all people.

### **Con Frameworks**

**Framework:** The responsibility of the government is to protect the rights of the citizens because the people agree to give up some degree of rights for protection. This means that the government cannot take actions that violate the rights of certain individuals to benefit others because the government cannot violate the implicit individual social contract that exists between an individual and his or her government. Thus, rights violations should be weighed over practical benefits because those benefits came at the cost of the government trampling on the rights of others.

**Explanation:** This framework is ideal for a case that spend the bulk of its time talking about how these programs violate the rights of individuals and any rights violations is the greatest harm because it means the government has failed to uphold the social contract. Moreover, this framework can be used to undermine the impacts of any affirmative case because it discussing the consequences that result from trying to achieve these benefits.

**Answer:** the best way to respond to this framework is to discuss why maximizing the most amount of life is the greatest impact because it allows all people to access their rights. Moreover, you can answer this framework by talking about how the government isn't only doing this to a few select people, but rather that they are using this on the masses, which means that there is no individual violation because they are doing this to everyone to benefit everyone.

**Framework:** You should prefer impacts that analyze the results of the program over the numerical results of the program because the numerical value of benefits is not reflective of the amount of privacy violation the government commits on a daily basis to lead to those successes.



Moreover, it is important to note that much of domestic surveillance by the NSA was considered classified until it was revealed to the people. This means that the government's intentions were to violate the rights of citizens without the public's consent.

**Explanation:** This framework works well in the rebuttal speech to tilt the ground in your favor because it makes it apparent to the judge that stopping a small number of attacks pales in comparison to the amount of resources and rights infringements that occurred to achieve that number. You would use it to allow for weighing in the Final Focus by creating a scale upon which the impacts can be compared.

**Answer:** Each attack prevented prevents countless Americans lives from being lost in a terrorist attack, as such the number of stopped attacks has the most importance in the round because each prevented attack maximizes the amount of life and welfare of all people in society, thus making perceived infringements on privacy okay.

**Framework:** Because the resolution doesn't specify an actor, we should examine the benefits and harms of domestic surveillance to the populous because the NSA created these programs to protect them; thus, team who can demonstrate the greatest amount of either harm or benefit through by any means should win the round.

**Explanation:** This framework works at the top of any diverse type of Negative case because it allows you to evaluate a variety of different types of impacts to come to the utilitarian conclusion that the harms are greater in magnitude than the benefits. Cases that focus on a specific type of harm may find it difficult to use this framework unless you can substantively prove that the one harm you prove is greater than an array of benefits.

**Answer:** The best way to beat this framework would be to work within it because it establishes a fair interpretation of who the debaters should be evaluating impacts from because the perception of an impact changes with regards to changing the actor perceiving them. You could respond, however, that there is one goal that should be evaluated and that whoever proves that one goal true wins the round. My suggestion is that the goal be to decrease terrorism because it is a simple and low burden to meet to win the round.



# Champion Briefs

November 2013

Public Forum Brief



Pro Arguments  
with Con Responses

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**PRO – Government Surveillance Moral**

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**Argument:** There needs to be a balance between liberty and security.

**Warrant:** If you had absolute liberty, terrorism will be impossible to stop.

Epstein, Richard A. "In Defense of the NSA" *Hoover Institution*. 18 June 2013. Web. October 05, 2013. <[www.hoover.org/publications/defining-ideas/article/149766](http://www.hoover.org/publications/defining-ideas/article/149766)>.

"Yet, not all cases are solved by our categorical rule concerning distrust of the government. According to libertarian theory, the bedrock function of government is to put in place institutions that limit aggression in both domestic and foreign affairs. **The question is: Are the means chosen reasonably adapted to the stated ends? Any effort to squelch all government abuse will result in a field day for terrorists and criminals.** It is never easy to set the right balance of government power versus individual liberty given that we have to contend with two kinds of error—letting terrorists and criminals escape or infringing upon the rights of innocent individuals."

**Warrant:** It is impossible to have absolute liberty or absolute security.

Epstein, Richard A. "In Defense of the NSA" *Hoover Institution*. 18 June 2013. Web. October 05, 2013. <[www.hoover.org/publications/defining-ideas/article/149766](http://www.hoover.org/publications/defining-ideas/article/149766)>.

"President Barack Obama is under harsh attack for stating the obvious: No amount of government ingenuity will guarantee the American people 100 percent security, 100 percent privacy and zero inconvenience. He was answering a burst of more heated responses from left and right alike to the "news" that for years the National Security Agency has been collecting metadata about Americans' phone calls and certain foreign Internet communications."

**Warrant:** We “balance” between liberty and security all the time.

Epstein, Richard A. “In Defense of the NSA” *Hoover Institution*. 18 June 2013. Web. October 05, 2013. <[www.hoover.org/publications/defining-ideas/article/149766](http://www.hoover.org/publications/defining-ideas/article/149766)>.

“Most libertarians are deeply suspicious of balancing tests because they do not have the hard-edged quality of fixed rules. **But unfortunately, balancing is all that we have when it comes to having the government respond to uncertain future events. The only issue is how best to balance.** One type of balancing involves an open-ended “facts-and-circumstances” test that leaves a lot to the imagination. This is the kind of test long used to determine whether police have “probable cause” to issue an arrest or search warrant, or whether testimony elicited in some custodial interrogation is sufficiently “voluntary” to be admissible into evidence for some purposes within the criminal system.” **These tests tend to survive**, not because they are perfect, but because courts develop certain niches in which a *per se* rule is applied: mere suspicion created by information from an untested informant does not count as probable cause in Fourth Amendment cases, but suspicion created after close observation of the subject by a reliable informant would.”

**Warrant:** Programs that do not conduct unreasonable searches are moral, NSA searches not immoral.

Pilon, Roger. “Government's metadata program is sound.” *Chicago Tribune*. Web. 7 Oct 2013. <[articles.chicagotribune.com/2013-06-12/opinion/ct-perspec-0612-nsa-20130612\\_1\\_nsa-national-security-agency-privacy](http://articles.chicagotribune.com/2013-06-12/opinion/ct-perspec-0612-nsa-20130612_1_nsa-national-security-agency-privacy)>.

**“In domestic and foreign affairs, the basic function of government is to protect our liberty, without unnecessarily violating that liberty in the process. The text of the Fourth Amendment grasps that essential trade-off by allowing searches, but not "unreasonable" ones.** That instructive, albeit vague, accommodation has led courts to craft legal rules that, first, define what a search is and, second, indicate the circumstances

under which one is justified. In the realm of foreign intelligence gathering, recognizing the need for secrecy and their own limitations, judges have shown an acute awareness of the strength of the public interest in national security. They have rightly deferred to Congress and the executive branch, allowing executive agencies to engage in the limited surveillance that lies at the opposite pole from ransacking a single person's sensitive papers for political purposes.”

**Warrant:** The liberty violation is trivial compared to the national security benefit.

Pilon, Roger. “Government's metadata program is sound.” *Chicago Tribune*. Web. 7 Oct 2013. <articles.chicagotribune.com/2013-06-12/opinion/ct-perspec-0612-nsa-20130612\_1\_nsa-national-security-agency-privacy>.

“As the president said, the process involves some necessary loss of privacy. But it's trivial, certainly in comparison to the losses that would have arisen if the government had failed to discern the pattern that let it thwart the 2009 New York subway bombing plot by Colorado airport shuttle driver Najibullah Zazi, an Afghan-American, who was prosecuted and ultimately pleaded guilty.”

**Warrant:** NSA programs not abusive, some abuses do not represent a pattern of abuse.

Pilon, Roger. “Government's metadata program is sound.” *Chicago Tribune*. Web. 7 Oct 2013. <articles.chicagotribune.com/2013-06-12/opinion/ct-perspec-0612-nsa-20130612\_1\_nsa-national-security-agency-privacy>.

“The critics miss the forest for the trees. **Yes, government officials might conceivably misuse some of the trillions of bits of metadata they examine using sophisticated algorithms. But one abuse is no pattern of abuses.** And even one abuse is not likely to happen given the safeguards in place. The cumulative weight of the evidence attests to the soundness of the program. The critics would be more credible if they could identify a pattern of government abuses. But after 12 years of continuous practice, they can't cite even a single case. We should be thankful that here, at least, government has done its job and done it well.”

**A/2 – Government Surveillance Moral**

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**Answer:** PRISM is intrusive because citizen's communications can unintentionally be monitored.

Lempert, Richard, "PRISM and Boundless Informant: Is NSA Surveillance a Threat?"  
*The Brookings Institute*. Web. 6 October 2013, <[www.brookings.edu/blogs/up-front/posts/2013/06/13-prism-boundless-informant-nsa-surveillance-lempert](http://www.brookings.edu/blogs/up-front/posts/2013/06/13-prism-boundless-informant-nsa-surveillance-lempert)>.

"PRISM appears to be a far narrower intelligence gathering program but far more intrusive. It can capture not just metadata but the content of communications transmitted via the web, including messages sent and retrieved, uploaded videos and the like. It is specifically targeted, and without a warrant neither American citizens nor permanent resident are legal targets. However, the protections citizens and permanent residents enjoy appear loose. News stories suggest that data capture is allowed to proceed whenever a responsible agent thinks it more likely than not that a possible target is foreign. The standard, if true, means that some communications involving only Americans are inevitably captured, and Americans may be caught up in surveillance aimed at foreigners, such as recordings of foreign chat room conversations."

**Answer:** NSA PRISM is creating the infrastructure for tyranny.

**Warrant:** Prism is one facet of a changing technological world that can lead to tyranny.

"This does not mean, however, that the NSA programs and the capacities they reveal are of no concern. They should be regarded as canaries in the coal mine; they provide early warning of dangers we may be confronting. These capacities, along with increasingly ubiquitous surveillance cameras, photo recognition software, the ongoing development of rapid recognition DNA analysis, drones that can spy or kill and DNA, fingerprint, photo

and other searchable digital databases together create what I have called *the infrastructure of tyranny*.”

**Warrant:** Though not likely, this outcome is not impossible to foresee.

Lempert, Richard, “PRISM and Boundless Informant: Is NSA Surveillance a Threat?”  
*The Brookings Institute*. Web. 6 October 2013, <[www.brookings.edu/blogs/up-front/posts/2013/06/13-prism-boundless-informant-nsa-surveillance-lempert](http://www.brookings.edu/blogs/up-front/posts/2013/06/13-prism-boundless-informant-nsa-surveillance-lempert)>.

**"These technologies potentially enable small groups of people to control and restrict the freedom of far larger numbers. We think this could not happen here, and I do not claim it is imminent, but recent trends in politics and social life suggest that if the fear was ever groundless, it no longer is.** Not only are our politics deeply and too often viciously divided, but divisions seem to be stoked by extremists who personally profit from their ability to arouse emotions and by small numbers of extremely wealthy individuals who spend freely to advance their views of the good society. Moreover, our political parties and Congress itself sometimes seem more interested in thwarting the opposition or scoring points with their most committed supporters than with cooperating and compromising to promote the national interest. **Concerns raised by these developments are exacerbated by an increased tendency within Congress to ignore more or less neutral procedural commitments and understandings that have allowed effective governance despite sometimes deep differences in political goals. In addition, we live in a time of increasing inequality and decreasing social mobility. The experience of other countries from the French Revolution on suggests that when inequality becomes too great and a small group of “haves” is seen as capturing too large a share of the pie, protests begin that even if peaceful at the start are prone to erupt into violence. Even before violence from below erupts, and almost always afterwards, we have seen those on top muster their resources to suppress dissent and to preserve their positions of power, using violence of their own if need be.”**

**Warrant:** Warrant, theoretically these tools could be used to put down a revolt or postpone an election.

Lempert, Richard, “PRISM and Boundless Informant: Is NSA Surveillance a Threat?”  
*The Brookings Institute*. Web. 6 October 2013, <[www.brookings.edu/blogs/up-front/posts/2013/06/13-prism-boundless-informant-nsa-surveillance-lempert](http://www.brookings.edu/blogs/up-front/posts/2013/06/13-prism-boundless-informant-nsa-surveillance-lempert)>.

“Historically the masses tend, sooner or later, to prevail, **but in PRISM, Boundless Informant and other new technologies we are developing a set of tools that make it more likely that an elite core will be able to disrupt nascent revolt and maintain its preferred position by increased surveillance and even selective killing.** Although it is not likely, it is not unimaginable that a future administration could, with substantial popular support, use a genuine crisis as an excuse to postpone a scheduled election, could put down subsequent protests with violence and could create a situation in which it maintained itself in power using the infrastructure we are creating to protect us from crime and terrorism. **Even if the possibility is small it cannot be too much diminished.** Doing this is likely to involve combating inequality, strengthening democratic institutions and perhaps abandoning the volunteer army, matters too far afield to be further discussed here.”

**Analysis:** The question of how to balance liberty and security is a prime question facing our nation: Do we value the liberty of individuals or the security of the whole? The pro team should argue that in this case, the balance between liberty and security should be more on the side of security – the harms to people’s privacy from prism is small compared to the security benefits. On the other hand, the con can argue that the prism program is still immoral, and that it creates the infrastructure for future tyranny.

## **PRO – Extraordinary Action Is Justified In Times Of Emergency**

**Argument:** In order to preserve and protect the country, some less than ideal actions are required during crisis.

**Warrant:** Congress authorized the President to use all necessary force to answer the attacks of 9/11.

Grimmett, Richard F. "Authorization For Use Of Military Force in Response to the 9/11 Attacks (P.L. 107-40): Legislative History." Congressional Research Service. The Library of Congress, 16 Jan. 2007. Web. 6 Oct. 2013.  
<<http://www.fas.org/sgp/crs/natsec/RS22357.pdf>>.

**“That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”**

**Warrant:** Because the U.S. is still in a time of war and our homeland counts as the battlefield, domestic surveillance is justified.

Bazan, Elizabeth B. "Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information." Congressional Research Service. The Library of Congress, 5 Jan. 2006. Web. 6 Oct. 2013.  
<<http://www.fas.org/sgp/crs/intel/m010506.pdf>>.

**“It might be argued that the United States is part of the battlefield in the war against terrorism in more than just a metaphorical sense. Proponents of this point of**



view would argue that the AUMF to authorizes the use of force anywhere in the world, including the territory of the United States, against any persons determined by the President to have “planned, authorized, committed, or aided the terrorist attacks” or “harbored such organizations or persons.” **Under this view, the United States is under actual and continuing enemy attack, and the President has the authority to conduct electronic surveillance in the same way the armed forces gather intelligence about the military operations of enemy forces, even if no actual combat is taking place.”**

**Warrant:** The threat of international terrorism is alive in the status quo.

Heyman, David. "Finding the Enemy Within." Center for Strategic and International Studies. Center for Strategic and International Studies, post 2007. Web. 6 Oct. 2013. <[http://csis.org/images/stories/HomelandSecurity/071022\\_Chap4-FindingTheEnemyWithin.pdf](http://csis.org/images/stories/HomelandSecurity/071022_Chap4-FindingTheEnemyWithin.pdf)>.

“Increased focus on DI is a necessary response to the threat posed by international terrorism. Terrorists live, work, plan, and act all over the world, including within our borders. They move and communicate with relative ease between foreign capitals and U.S. cities. **The 9/11 attacks represent a failure of intelligence agencies—foreign and domestic—to communicate and coordinate as the planners and perpetrators lived within and traveled in and out of the United States for months prior to the attack, with little notice.”**

**Warrant:** Terrorist recruitment and attacks have continued to expand.

Heyman, David. "Finding the Enemy Within." Center for Strategic and International Studies. Center for Strategic and International Studies, post 2007. Web. 6 Oct. 2013. <[http://csis.org/images/stories/HomelandSecurity/071022\\_Chap4-FindingTheEnemyWithin.pdf](http://csis.org/images/stories/HomelandSecurity/071022_Chap4-FindingTheEnemyWithin.pdf)>.

“Despite our success in Afghanistan, eliminating a regime that had provided safe haven for terrorists to train and launch operations to attack us, terrorism has neither been quelled nor conquered. **To the contrary, terrorist recruitment and terrorist attacks continue to expand.**”

**Warrant:** In times of crisis, a constitutional government must overcome the crisis in whatever means necessary.

Rossiter, Clinton. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*. New Brunswick, NJ: Transaction, 2011. Print.

**“Therefore, in time of crisis a democratic, constitutional government must be temporarily altered to whatever degree is necessary to overcome the peril and restore normal conditions.** This alteration invariably involves government of a stronger character; that is, the government will have more power and the people fewer rights.”

**Warrant:** The people in constitutional democracies recognize the power of their leaders in times of emergency.

Rossiter, Clinton. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*. New Brunswick, NJ: Transaction, 2011. Print.

“It is equally important to realize that they are legal and constitutional, that the people of the constitutional democracies have recognized openly that their leaders should have extraordinary power in extraordinary times.”

**Warrant:** The state should be put above the law.

Rossiter, Clinton. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*. New Brunswick, NJ: Transaction, 2011. Print.

“The law was made for the state, not the state for the law. If the circumstances are such that a choice must be made between the two, it is the law which must be sacrificed to the state.”

**Impact Warrant:** The NSA held back information pre 9/11 to not be perceived as targeting individuals.

Gorman, Siobhan. "NSA's Domestic Spying Grows As Agency Sweeps Up Data." The Wall Street Journal. The Wall Street Journal, 10 Mar. 2008. Web. 6 Oct. 2013. <<http://online.wsj.com/article/SB120511973377523845.html>>.

“The 2002 congressional inquiry into the 9/11 attacks criticized the NSA for holding back information, which NSA officials said they were doing to protect the privacy of U.S. citizens. ‘NSA did not want to be perceived as targeting individuals in the United States’ and considered such surveillance the FBI's job, the inquiry concluded.”

**Impact Warrant:** The barriers to emergency dictatorship must be partially suspended if the government is to effectively overcome the threat to the country.

Rossiter, Clinton. Constitutional Dictatorship: Crisis Government in the Modern Democracies. New Brunswick, NJ: Transaction, 2011. Print.

“The Bill of Rights, federalism, and the separation of powers are the three main constitutional barriers to the easy establishment of emergency dictatorship in the United States. These are the principles of the American system which must be in whole or in part suspended if such government is to be inaugurated in a national emergency.”

**Impact Warrant:** No democracy has gone through emergency without having some undesirable change.

Rossiter, Clinton. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*. New Brunswick, NJ: Transaction, 2011. Print.

**“No democracy ever went through a period of thoroughgoing constitutional dictatorship without some permanent and often unfavorable altercation in its governmental scheme, and in more than one instance an institution of constitutional dictatorship has been turned against the order it was established to defend.”**

**Analysis:** In order to run this argument, you will have to put it within a realist framework. Although it does not sound completely ideal, the only way a country can return to normal is by sacrificing some of its greatest ideals. Especially in the age of international terrorism, some rights have to be abridged in the short term to protect them in the long term.

## A/2 – Extraordinary Action is Justified in Times of Emergency

**Answer:** Actions taken by the government do not change what has been outlined in the constitution.

**Warrant:** Multiple presidential actions in times of crisis do not change the limits of the constitutional language and intent.

Bloom, Robert. "The Constitutional Infirmity of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." *William & Mary Bill of Rights Journal*. 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

“The fact that multiple presidents have taken dubious constitutional positions on the use of force does not justify or validate such actions or change the limits of constitutional language and intent.”

**Answer:** Extraordinary action undermines public trust in government.

Heyman, David. "Finding the Enemy Within." Center for Strategic and International Studies. Center for Strategic and International Studies, post 2007. Web. 6 Oct. 2013. <[http://csis.org/images/stories/HomelandSecurity/071022\\_Chap4-FindingTheEnemyWithin.pdf](http://csis.org/images/stories/HomelandSecurity/071022_Chap4-FindingTheEnemyWithin.pdf)>.

**“Unlimited collection would not only be an invasion of privacy, it would be counter to the common expectation of Americans to be free to be left alone. Even the perception of unchecked intelligence diminishes greatly the public’s trust in government. Further, when the public learns through news leaks of unwarranted, potentially unlawful collection, it leaves many asking what else is going on?”**

**Answer:** Extraordinary action just not justify the complete overriding of government institutions.

**Warrant:** The functions of government are separated by mutually independent offices and institutions in order to protect the inherent and inalienable rights of their citizens.

Rossiter, Clinton. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*. New Brunswick, NJ: Transaction, 2011. Print.

**“The functions of government are parceled out among a number of mutually independent offices and institutions; the power to exercise those functions is circumscribed by well-established laws, customs, and constitutional prescriptions; and the people for whom this government was instituted are in possession of a lengthy catalogue of economic, political, and social rights which their leaders recognize as inherent and inalienable.”**

**Impact Warrant:** Emergency does not create power.

Rossiter, Clinton. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*. New Brunswick, NJ: Transaction, 2011. Print.

“Chief Justice Charles Evans Hughes in *Home building and loan Association v. Blaisdell* 1934, declared: ‘Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government...were determined in the light of emergency and they are not altered by emergency.’ ”

**Analysis:** Although you can largely recognize the importance of emergency in your answers, you can outweigh with the rights violations, show the long-term impacts of public distrust in the government and the lacking ability of the government to become something it is not to overcome the threat. If you can find your own rhetorical way of saying, “We cannot become what we are trying to fight”, your judge will likely be very persuaded

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**PRO – The NSA Is A Biproduct of the National Surveillance State**

**Argument:** The NSA is just a result of the National Surveillance State, a system of governing necessary in the 21<sup>st</sup> century,

**Warrant:** The definition of the National Surveillance State.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

“During the last part of the twentieth century, the United States began developing a new form of governance that features the collection, collation, and analysis of information about populations both in the United States and around the world. This new form of governance is the National Surveillance State.”

**Warrant:** The role of the National Surveillance State.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

“In the National Surveillance State, the government uses surveillance, data collection, collation, and analysis to identify problems, to head off potential threats, to govern populations, and to deliver valuable social services.”

**Warrant:** The National Surveillance State is a system of governing

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

“The National Surveillance State is a way of governing. It is neither the product of emergency nor the product of war. War and emergency are temporary conditions.”

**Warrant:** The National Surveillance State is a natural successor of past states of governing in order to provide basic social services.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

**“In fact, even today, providing basic social services—like welfare benefits—and protecting key rights—like rights against employment discrimination— are difficult, if not impossible, without extensive data collection and analysis. The National Surveillance State grows naturally out of the Welfare State and the National Security State; it is their logical successor. The Welfare State governs domestic affairs by spending and transferring money and by creating government entitlements, licenses, and public works.”**

**Warrant:** The CIA and NSA are ways the National Security State promote foreign policy,

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.



“The National Security State promotes foreign policy through investments in defense industries and defense-related technologies, through creating and expanding national intelligence agencies like the CIA and the NSA, and through the placement of American military forces and weapons systems around the globe to counter military threats and project national power.”

**Analysis:** Due to the technological advances of the 21st century, the U.S. government has innovated to make governance of citizens more effective. This governance includes governing populations, delivering valuable social services, and heading off potential threats. The NSA, therefore, is simply a product of a shift of government in place. If as a U.S. citizen, your judge finds it valuable to be governed, they should (with your argumentation, of course) conclude that the harms of NSA are outweighed by all the other good things the NSS does.”

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## A/2 – Only Sustainable Military Strategy

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**Answer:** There are significant harms of the National Surveillance State.

**Warrant:** The government can create law that circumvents basic rights.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

“The National Surveillance State poses three major dangers for our freedom. Because the National Surveillance State emphasizes ex ante prevention rather than ex post apprehension and prosecution, **the first danger is that government will create a parallel track of preventative law enforcement that routes around the traditional guarantees of the Bill of Rights.**”

**Warrant:** Military detention practices and the NSA are examples of the National Security State’s ability to undermine the rights of Americans.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

“The Bush administration’s military detention practices and its NSA surveillance program are two examples. **The administration justified detaining and interrogating people—including American citizens—in ways that would have violated traditional legal restraints on the grounds that it was not engaged in ordinary criminal law enforcement. It sought intelligence that would prevent future attacks and wanted to**

**prevent terrorists from returning to the battlefield. Similarly, the administration defended warrantless surveillance of people in the United States by arguing that the President was not engaged in criminal prosecutions but in collection of military intelligence designed to fight terrorism.”**

**Warrant:** This law circumvention could influence every day law enforcement and provision of government services

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

**“The second danger posed by the National Surveillance State is that traditional law enforcement and social services will increasingly resemble the parallel track. Once governments have access to powerful surveillance and data mining technologies, there will be enormous political pressure to use them in everyday law enforcement and for delivery of government services. If data mining can help us locate terrorists, why not use it to find deadbeat dads, or even people who have not paid their parking tickets?65 If surveillance technologies signal that certain people are likely threats to public order, why not create a system of preventive detention outside the ordinary criminal justice system?66 Why not impose sanctions outside the criminal law, like denying people the right to board airplanes or use public facilities and transportation systems? And if DNA analysis can identify people who will likely impose high costs on public resources, why not identify them in advance and exclude them from public programs and other opportunities? The more powerful and effective our technologies of surveillance and analysis become, the more pressure the government will feel to route around warrant requirements and other procedural hurdles so that it can catch potential troublemakers more effectively and efficiently before they have a chance to cause any harm.”**

**Warrant:** Congress already passing legislation that will allow the introduction of unmanned drones.

Scaliger, Charles. "The Surveillance State: Knowing Every Bit About You." The New American. The New American, 10 May 2012. Web. 06 Oct. 2013.

<<http://www.thenewamerican.com/tech/computers/item/11235-the-surveillance-state-knowing-every-bit-about-you>>.

**“The government’s new powers of surveillance will not be limited to supercomputers tracking our every act of private electronic computation. The advent of unmanned drones, a legacy of the war in Afghanistan, will soon transform law enforcement at every level. For the cost of one police helicopter that can only be in one place at a time, a given jurisdiction could deploy dozens of remotely piloted drones to overfly restive neighborhoods and keep tabs on backyards and open windows as well as public areas. This is not idle speculation. In February, Congress passed the FAA Reauthorization Act, which is transparently calculated to streamline the introduction of unmanned drones, for federal, state, and local law enforcement and surveillance, into U.S. domestic airspace.”**

**Analysis:** Although the emergence of the National Security State is inevitable, it’s complete disregard of basic rights provided to citizens is not. Therefore, it is important for you to not let your opponents’ just lump the lack of transparency and undermining of rights into the benefits of social security.

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**PRO – Adding Transparency Solves**

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**Argument:** Adding transparency will allow Americans to amend the NSA "spying" system to prevent egregious abuses, while also stopping terrorism.

**Warrant:** Transparency doesn't exist in the status quo.

Gellman, Barton. "NSA Broke Privacy Rules Thousands of times per Year, Audit Finds." *Washington Post*. The Washington Post, 21 Aug. 2013. Web. 04 Oct. 2013. <[http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125_story.html)>.

"Generally, the NSA reveals nothing in public about its errors and infractions. The unclassified versions of the administration's semiannual reports to Congress feature blacked-out pages under the headline "Statistical Data Relating to Compliance Incidents.""

Gellman, Barton. "NSA Broke Privacy Rules Thousands of times per Year, Audit Finds." *Washington Post*. The Washington Post, 21 Aug. 2013. Web. 04 Oct. 2013. <[http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125_story.html)>.

**"The limited portions of the reports that can be read by the public acknowledge "a small number of compliance incidents.""**

**Warrant:** We are already making strives to build a more transparent system.

Savage, Charlie. "Senators Push to Preserve N.S.A. Phone Surveillance." *New York Times*. 26 Sept. 2013. Web. 4 Oct. 2013.

<[http://www.nytimes.com/2013/09/27/us/politics/senators-push-to-preserve-nsa-phone-surveillance.html?\\_r=0](http://www.nytimes.com/2013/09/27/us/politics/senators-push-to-preserve-nsa-phone-surveillance.html?_r=0)>.

"The measure would require public reports of how often the N.S.A. had used the calling log database, she said."

**Warrant:** President Obama is willing to reform surveillance programs.

Lee, Timothy. "Here's the President's Four-point Plan for NSA Transparency." *The Washington Post*. 9 Aug. 2013. Web. 4 Oct. 2013.

<<http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/09/heres-the-presidents-four-point-plan-for-nsa-transparency/>>.

**"The president says he favors a series of reforms designed to make the government's surveillance programs more transparent. "I've directed the intelligence community to make public as much information about these programs as possible," Obama said. The disclosures will include the government's interpretation of Section 215 of the Patriot Act. The president will also name a "full-time civil liberties and privacy officer," and create a new Web site to post documents related to government surveillance."**

**Warrant:** These programs would allow the public to act as the checks and balances to protect Americans' privacies.

Medici, Andy. "Lawmaker to Introduce NSA Transparency Bill." *Federal Times*. Gannett Government Media Corporation, 3 Oct. 2013. Web. 04 Oct. 2013.

<<http://www.federaaltimes.com/article/20131003/DEPARTMENTS01/310030006/Lawmaker-introduce-NSA-transparency-bill>>.

**"Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee, said at the Washington Post Live Cybersecurity Summit, that his bill would allow NSA to declassify information that would better inform the public about the scope of the**

**agency's operations and reassure the public that adequate checks and balances on those operations are in place."**

**Warrant:** Distrust of the system is irrational because of a general unknowing of what the NSA is doing.

Waterman, Shaun. "NSA Chief's Admission of Misleading Numbers Adds to Obama Administration Blunders." *The Washington Times*. The Washington Times, 2 Oct. 2013. Web. 04 Oct. 2013.  
<<http://www.washingtontimes.com/news/2013/oct/2/nsa-chief-figures-foiled-terror-plots-misleading/?page=all>>.

**"The "lack of information" about the scale of the program "frankly, scares people and causes distrust. It makes them distrust our government," said Sen. Al Franken, Minnesota Democrat."**

**Warrant:** The lawbreaking and privacy infringements could have been solved with transparency.

Lee, Timothy. "Why a More Transparent NSA Would Be Good for Barack Obama." *The Washington Post*. The Washington Post, 3 July 2013. Web. 4 Oct. 2013.  
<<http://www.washingtonpost.com/blogs/wonkblog/wp/2013/07/03/why-a-more-transparent-nsa-would-be-good-for-barack-obama/>>.

**"In all of these cases, secrecy made lawbreaking more likely. If an NSA or FBI employee suspected the law was being broken, there was no easy way to blow the whistle. And with limited oversight, it was less likely that Congress or the courts to notice something was amiss. So the abuses festered for years."**

**Warrant:** With transparency, not all of the burden of protecting American liberties would fall on the President.

Lee, Timothy. "Why a More Transparent NSA Would Be Good for Barack Obama." *The Washington Post*. The Washington Post, 3 July 2013. Web. 4 Oct. 2013.  
<<http://www.washingtonpost.com/blogs/wonkblog/wp/2013/07/03/why-a-more-transparent-nsa-would-be-good-for-barack-obama/>>.

**"More transparency and oversight** wouldn't just make it easier for the public to trust their government. It **would also make it easier for President Obama himself to keep his own subordinates in line**. By insisting on widespread secrecy and aggressively prosecuting whistleblowers, **President Obama has cut himself off from valuable sources of information about what his subordinates are doing**. **More transparency and oversight would allow the press, the Congress, and the courts to act as the president's eyes and ears, alerting him to cases where his subordinates have gone beyond what the law allows.**"

**Analysis:** Remember the resolution only deals with "NSA domestic surveillance." Therefore, the affirmative team, as long as they advocate some sort of domestic surveillance, can make amendments to the system of the status quo. Adding transparency is a fantastic amendment to protect Americans from terrorism and from rights infringements.



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**A/2 – Only Sustainable Military Strategy**

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**Answer:** Transparency hinders the collection of intelligence.

**Warrant:** Transparency will only wash out the already limited benefits of NSA collection practices by over-regulating and slowing the process down.

Baker, Stewart. "Oversight Hearing on the Administration's Use of FISA Authorities." Skating on Stilts, 17 July 2013. Web. 4 Oct. 2013.  
<<http://www.skatingonstilts.com/files/pdf-of-baker-testimony-to-house-judiciary-committee-on-fisa-.pdf>>.

"Forty years later, though, we're still finding problems with this experiment. One of them is that **law changes slowly while technology changes quickly. That usually means Congress has to change the law frequently to keep up. But in the context of intelligence, it's often hard to explain why the law needs to be changed, let alone to write meaningful limits on collection without telling our intelligence targets a lot about our collection techniques. A freewheeling and prolonged debate – and does Congress have any other kind? – will give them enough time and knowledge to move their communications away from technologies we've mastered and into technologies that thwart us. The result won't be intelligence under law; it will be law without intelligence.**"

**Warrant:** It is impossible and burdensome to have a public debate to find every program that could be lawfully created to be banned.

Baker, Stewart. "Oversight Hearing on the Administration's Use of FISA Authorities." Skating on Stilts, 17 July 2013. Web. 4 Oct. 2013.  
<<http://www.skatingonstilts.com/files/pdf-of-baker-testimony-to-house-judiciary-committee-on-fisa-.pdf>>.

"In short, in both section 215 and section 702, the government has found a reasonable way to square intelligence-gathering necessities with changing technology. Now that they've been exposed to the light of day, these programs are not at all hard to justify. But **we cannot go on exposing every collection technique to the light of day just to satisfy everyone that the programs are appropriate. The exposure itself will diminish their effectiveness. Even a fair debate in the open will cause great harm.**"

**Answer:** Transparency is impossible.

**Warrant:** There has yet to be transparency to Congress. How can we expect to create transparency to all of the U.S.? Moreover, the NSA has not been totally and truthfully forthcoming to Congress, so it is doubtful that they will be to U.S. citizens.

"Lankford: Absurd That NSA Not Transparent to Congress." *U.S. Congressman James Lankford*. N.p., 22 Aug. 2013. Web. 04 Oct. 2013.  
<<http://lankford.house.gov/press-release/lankford-absurd-nsa-not-transparent-congress>>.

**"Representative James Lankford (R-OK) issued the following statement regarding the controversy and the Agency's lack of transparency to Congress about security leaks: "As a Member of Congress, I expect to receive accurate and complete information from a federal agency when requested. It is absurd that the intelligence community was not completely forthcoming in its answers about classified government programs misusing Americans' private information. An agency that cannot fully answer questions asked by a co-equal branch of government can expect significant structural changes and stringent oversight in the future."**

**Answer:** The documents are full of redactions and not transparent.

**Warrant:** Transparency, even in the peak of the incidence, has failed to sufficiently increase, making it extremely unlikely that it would increase in the long-term.

Elliott, Justin. "What NSA Transparency Looks Like." *The Beachwood Reporter*. The Beachwood Media Company, 20 Aug. 2013. Web. 04 Oct. 2013.  
<[http://www.beachwoodreporter.com/politics/what\\_nsa\\_transparency\\_looks\\_li.php](http://www.beachwoodreporter.com/politics/what_nsa_transparency_looks_li.php)>.

**"As an oversight measure, the law requires the attorney general to submit semiannual reports to the congressional intelligence and judiciary committees. The section with the redactions above is titled "Statistical Data Relating to Compliance Incidents." One of the only unredacted portions reads, "The value of statistical information in assessing compliance in situations such as this is unclear. A single incident, for example, may have broad ramifications. Multiple incidents may increase the incident count, but may be deemed of very limited significance.""**

**Analysis:** Transparency is either a. not beneficial or b. impossible to acquire. Moreover, we can never know if the NSA will completely reveal data to the public.

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## PRO – Other Ways To Prevent Terrorism

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**Argument:** The NSA is one of the only ways that we can successfully fight terrorism. In other words, it is a necessary evil.

**Warrant:** We can no longer successfully interrogate.

Thiessen, Marc A. "Big Brother Isn't Watching You." *Washington Post*. The Washington Post, 10 June 2013. Web. 06 Oct. 2013.

<[http://www.washingtonpost.com/opinions/marc-thiessen-leaks-not-the-nsa-programs-deserve-condemnation/2013/06/10/e91d09ac-d1c9-11e2-a73e-826d299ff459\\_story\\_1.html](http://www.washingtonpost.com/opinions/marc-thiessen-leaks-not-the-nsa-programs-deserve-condemnation/2013/06/10/e91d09ac-d1c9-11e2-a73e-826d299ff459_story_1.html)>.

**“The first is interrogation — getting the terrorists to tell us their plans. But thanks to Barack Obama, we don’t do that anymore.”**

**Warrant:** Infiltrating al-Qaeda, which was already difficult, especially after the discovery of a double agent.

Thiessen, Marc A. "Big Brother Isn't Watching You." *Washington Post*. The Washington Post, 10 June 2013. Web. 06 Oct. 2013.

<[http://www.washingtonpost.com/opinions/marc-thiessen-leaks-not-the-nsa-programs-deserve-condemnation/2013/06/10/e91d09ac-d1c9-11e2-a73e-826d299ff459\\_story\\_1.html](http://www.washingtonpost.com/opinions/marc-thiessen-leaks-not-the-nsa-programs-deserve-condemnation/2013/06/10/e91d09ac-d1c9-11e2-a73e-826d299ff459_story_1.html)>.

**“The second is penetration, either by infiltrating agents into al-Qaeda or by recruiting operatives from within the enemy’s ranks. This is incredibly hard — and it got much harder, thanks to the leak exposing a double agent, recruited in London by British intelligence, who had penetrated al-Qaeda in the Arabian Peninsula and helped us**

**break up a new underwear bomb plot in Yemen — forcing the extraction of the agent.”**

**Warrant:** Privacy and rights violations are not mutually exclusive. Parts of the Patriot Act violated American rights anyway.

Lee, Timothy. "Why a More Transparent NSA Would Be Good for Barack Obama." *The Washington Post*. The Washington Post, 3 July 2013. Web. 6 Oct. 2013.

<<http://www.washingtonpost.com/blogs/wonkblog/wp/2013/07/03/why-a-more-transparent-nsa-would-be-good-for-barack-obama/>>.

For example, **the Patriot Act gave the Bush administration broad authority to issue National Security Letters, secret requests for information that don't require judicial oversight. But a 2007 Inspector General's report found more than 700 cases where FBI agents who *didn't* have the authority to issue NSLs had improperly obtained information by telling companies that "exigent circumstances" required that the information be turned over immediately, without even the minimal checks required by the NSL rules.**

**Analysis:** We can't fight terrorism without the NSA, as most of our techniques to fight terrorism are failing or they, too, violate American rights.

**A/2 – Other Ways To Prevent Terrorism**

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**Answer:** Normal policing works, and it doesn't violate our rights like the NSA does.

**Warrant:** Most cases which we stop terrorism involve normal policing not the NSA.

Mueller, John, and Mark Stewart. "3 Questions About NSA Surveillance." *The Chronicle*. 13 June 2013. Web. 06 Oct. 2013.  
<<http://chronicle.com/blogs/conversation/2013/06/13/3-questions-about-nsa-surveillance/>>.

**"A set of case studies of the 53 post-9/11 plots by Islamist terrorists to damage targets in the United States suggests this is typical. Where the plots have been disrupted, as in the Zazi case, the task was accomplished by ordinary policing. The NSA programs scarcely come up at all."**

**Answer:** Wiretapping program fail even though they are said to work.

**Warrant:** Even more direct approaches to prevent terrorism by spying fail as well, making it seem even more unlikely that the ambitious NSA program will work anyway.

Sanchez, Julian. "Where's the Oversight on NSA Spying?" *Politico*. POLITICO, 16 Aug. 2013. Web. 06 Oct. 2013. <<http://www.politico.com/story/2013/08/opinion-nsa-spying-95632.html>>.

**"Americans were told that the original warrantless wiretapping program authorized by President George W. Bush had "been successful in detecting and preventing attacks inside the United States," and even that it had "saved thousands of lives." Years later, an internal investigation was unable to back up those dramatic claims, and found that intelligence officials "had difficulty citing specific instances**

where [the program] had directly contributed to counterterrorism successes.”  
Instead, it had wasted time and resources by generating false leads and spying on people unconnected to terrorism.”

**Answer:** Drones work well.

**Warrant:** Drones have disabled al Qaeda and other militant groups by killing leaders and denying terrorist sanctuaries.

Byman, Daniel. "Why Drones Work: The Case for Washington's Weapon of Choice." *The Brookings Institution*. The Brookings Institution, July-Aug. 2013. Web. 06 Oct. 2013. <<http://www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman>>.

“The drones have done their job remarkably well: by killing key leaders and denying terrorists sanctuaries in Pakistan, Yemen, and, to a lesser degree, Somalia, drones have devastated al Qaeda and associated anti-American militant groups.”

**Answer:** Special operations work.

**Warrant:** Special operations succeeded in taking out a top target in 84% of the raids.

Naylor, Sean. "Chinook Crash Highlights Rise in Spec Ops Raids." *Army Times*. Gannett Government Media Corporation, 21 Aug. 2011. Web. 06 Oct. 2013. <<http://www.armytimes.com/article/20110821/NEWS/108210311/Chinook-crash-highlights-rise-in-spec-ops-raids>>.

“This year, the special operators captured or killed their principal target in about 49 percent of the raids, and even on missions that miss the primary target, "his next closest associate or another individual directly linked to the target" is killed or captured 35 percent of the time, meaning that 84 percent of the raids achieve some

**degree of success**, according to numbers provided by ISAF Joint Command spokesman Army Maj. Jason Waggoner.”

**Analysis:** There are so many ways that we can take the fight to terrorists rather than taking that fight to the American people. Normal policing can protect us domestically without stripping away American rights, while targeted killing abroad will only foster anti-American sentiment.



## **PRO – Oversight Succeeds**

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**Argument:** U.S. government oversight (through the FISA courts and Congress) of NSA actions protect citizens.

**Warrant:** The released documents show NO abuse of civil liberties and demonstrate how the NSA actively respects American citizens' rights.

Wittes, Benjamin. "The New Republic." *New Republic*. The New Republic, 18 Aug. 2013. Web. 04 Oct. 2013. <<http://www.newrepublic.com/article/114364/nsa-spying-defense-case-administration-isnt-making>>.

"Shameful as it is that **these documents** were leaked, they actually should give the public great confidence both in NSA's internal oversight mechanisms and in the executive and judicial oversight mechanisms outside the agency. They **show no evidence of any intentional spying on Americans or abuse of civil liberties. They show a low rate of the sort of errors any complex system of technical collection will inevitably yield. They show robust compliance procedures on the part of the NSA. And they show an earnest, ongoing dialog with the FISA Court over the parameters of the agency's legal authority and a commitment both to keeping the court informed of activities and to complying with its judgments on their legality.**"

**Warrant:** The two thousand mistakes analysis does not pertain to the topic because it mainly deals with foreign intelligence targets. Moreover, almost all are inadvertent, none involving illegal surveillance.

Wittes, Benjamin. "The New Republic." *New Republic*. The New Republic, 18 Aug. 2013. Web. 04 Oct. 2013. <<http://www.newrepublic.com/article/114364/nsa-spying-defense-case-administration-isnt-making>>.

"Let's start with the audit report that supposedly shows thousands of violations of privacy rules and legal breaches. To be clear, **not one of these 2,776 “incidents”** (over a year at the NSA’s headquarters) **involves a decision by any NSA employee to engage in illegal surveillance against an American. They are nearly all inadvertent mistakes of a technical nature**—the majority of a few discrete types (See pp. 5-6). **The bulk are “roamers,” which take place when a valid foreign intelligence target happens to cross into the United States.** The IG report notes that “Roamer incidents *are largely unpreventable, even with good target awareness and traffic review, since target travel activities are often unannounced and not easily predicted*” (emphasis added)."

**Warrant:** Of the more than two thousand errors, many were just typos.

Wittes, Benjamin. "The New Republic." *New Republic*. The New Republic, 18 Aug. 2013. Web. 04 Oct. 2013. <<http://www.newrepublic.com/article/114364/nsa-spying-defense-case-administration-isnt-making>>.

**"There are also a fair number of database query errors—that is, typos, confusions of boolean terms like “and” and “or,” syntax errors, and the like.** You know . . . mistakes. These mistakes are caught through a combination of automated checking, auditing, and self-reporting. In other words, the fewer than 3,000 incidents reported over the year in question involve the NSA’s own systems—and people—catching and correcting technical errors."

**Warrant:** There were no incidents that were extreme rights infringements, and in many cases the mistakes are amended and recorded.

Wittes, Benjamin. "The New Republic." *New Republic*. The New Republic, 18 Aug. 2013. Web. 04 Oct. 2013. <<http://www.newrepublic.com/article/114364/nsa-spying-defense-case-administration-isnt-making>>.

**"Even the section entitled "Significant Incidents of Non-compliance" (pp. 11-13) does not detail anything like any intentional violation of the privacy rights of Americans. One incident involved the retention of FISA business records material longer than the permitted five years. Another involved an incident in which collection continued against an individual after indications had arisen suggesting he had a green card; this stopped when a senior linguist figured out that those indications had been received and not noticed. In other words, what this document shows is that among the billions and billions of communications the NSA interacts with every year, it has certain low rate of technical errors, many of them unavoidable, which it dutifully records and counts."**

**Warrant:** Contrary to common belief, FISA Courts give proper consideration and applies the law toughly to confirm NSA improvement.

Wittes, Benjamin. "The New Republic." *New Republic*. The New Republic, 18 Aug. 2013. Web. 04 Oct. 2013. <<http://www.newrepublic.com/article/114364/nsa-spying-defense-case-administration-isnt-making>>.

**"The common mythology is that the FISA Court is a rubber stamp. But in this incident, as the document recounts, "the judge ordered certain 'upstream' or 'passive' FAA DNI collection to cease after 30 days, unless NSA implements solutions to correct all deficiencies identified in the opinion document." The agency noted that its components were "coordinating a response, which includes planning to implement a conservative solution in which the higher-risk collection will be sequestered." This solution is "designed to comply with the judge's order; however, the judge will have to determine if it does." It sounds suspiciously like a court here was holding the government to its vision of the law—and the government, even while contemplating an appeal of this decision by the rubber-stamp that wasn't, was snapping to attention."**

**Warrant:** Not mutually exclusive. The abridgement of our rights by foreign countries will occur anyways. The NSA may even lessen those infringements by foreign bodies.

Merica, Dan. "Obama: NSA Revelations Show 'oversight Worked'" *CNN Political Ticker RSS*. Cable News Network, 23 Aug. 2013. Web. 04 Oct. 2013.  
<<http://politicalticker.blogs.cnn.com/2013/08/23/obama-nsa-revelations-show-oversight-worked/>>.

**""These (spying capabilities) aren't unique to the NSA," Obama said. "Even as we put in safeguards to make sure that the U.S. government doesn't abuse these capabilities, we've also got to make sure that foreign governments aren't hacking into our banks, aren't hacking into our critical infrastructure, are making sure that consumers are protected.""**

**Warrant:** The safeguards provided by the court system were implemented and the checks and balances succeeded.

"Obama Calls Syria an Issue of 'Grave Concern': Excerpts." *Wall Street Journal*. Dow Jones & Company, 23 Aug. 2013. Web. 04 Oct. 2013.  
<<http://blogs.wsj.com/washwire/2013/08/23/obama-calls-syria-an-issue-of-grave-concern/>>.

"... this latest revelation that was made, what was learned was that **NSA had inadvertently, accidentally pulled the emails of some Americans in violation of their own rules, because of technical problems that they didn't realize. They presented those problems to the court. The court said, "This isn't going to cut it. You're going to have to improve the safeguards, given these technical problems."** That's exactly what happened. So **the point is, is that all these safeguards, checks, audits, oversight worked.**"

**Warrant:** The oversight is extensive, and every violation has been addressed.

Medici, Andy. "Lawmaker to Introduce NSA Transparency Bill." *Federal Times*. Gannett Government Media Corporation, 3 Oct. 2013. Web. 04 Oct. 2013.  
<<http://www.federtimes.com/article/20131003/DEPARTMENTS01/310030006/Lawmaker-introduce-NSA-transparency-bill>>.

"He said **every violation of over-reach by the NSA has been addressed and the agency is subject to full oversight by the administration and Congress. "There is no system in the United States government — and, I would argue, state government — that is more overseen than these programs,"** Rogers said."

**Analysis:** This argument functions as a preempt to arguments on the negative about rights infringements. The examples they provide are all one time instances, while the oversight is always providing protection to the people of the United States, as proven by their fast response to the rulings made by the courts.

## **A/2 – Oversight Succeeds**

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**Answer:** FISA Courts fail.

**Warrant:** The courts can't independently verify that American's privacy is protected, and it can never tell if the government is reporting the full truth.

Leonnig, Carol D. "Court: Ability to Police U.S. Spying Program Limited." *Washington Post*. The Washington Post, 16 Aug. 2013. Web. 04 Oct. 2013.

<[http://www.washingtonpost.com/politics/court-ability-to-police-us-spying-program-limited/2013/08/15/4a8c8c44-05cd-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/politics/court-ability-to-police-us-spying-program-limited/2013/08/15/4a8c8c44-05cd-11e3-a07f-49ddc7417125_story.html)>.

**"The chief judge of the Foreign Intelligence Surveillance Court said the court lacks the tools to independently verify how often the government's surveillance breaks the court's rules that aim to protect Americans' privacy. Without taking drastic steps, it also cannot check the veracity of the government's assertions that the violations its staff members report are unintentional mistakes."**

**Warrant:** FISA has created secret precedents and has failed to reject surveillance requests on a consistent basis.

Newman, Nathan. "Overview of Legal Implications of NSA Spying." *Privacy Research Group*. New York University, 18 Sept. 2013. Web. 04 Oct. 2013.

<<http://blogs.law.nyu.edu/privacyresearchgroup/2013/09/prg-overview-of-legal-implications-of-nsa-spying/>>.

**"Following expansion of requests to become more programmatic, FISA has been issuing long but secret opinions creating precedents for operation of the FISA court. Existing Supreme Court precedent has been declared to make metadata**

**given to a third party not subject to Constitutional protection. 34,000 surveillance requests since FISA created; 11 have been rejected."**

**Warrant:** The NSA doesn't report everything to the courts OR Congress.

Gellman, Barton. "NSA Broke Privacy Rules Thousands of times per Year, Audit Finds." *Washington Post*. The Washington Post, 21 Aug. 2013. Web. 04 Oct. 2013. <[http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125_story.html)>.

**"The documents, provided earlier this summer to The Washington Post by former NSA contractor Edward Snowden, include a level of detail and analysis that is not routinely shared with Congress or the special court that oversees surveillance. In one of the documents, agency personnel are instructed to remove details and substitute more generic language in reports to the Justice Department and the Office of the Director of National Intelligence. In one instance, the NSA decided that it need not report the unintended surveillance of Americans. A notable example in 2008 was the interception of a "large number" of calls placed from Washington when a programming error confused the U.S. area code 202 for 20, the international dialing code for Egypt, according to a "quality assurance" review that was not distributed to the NSA's oversight staff."**

**Warrant:** FICA can't do anything to prevent NSA infractions on American rights.

Banford, James. "NSA: Listening to Everyone — except Oversight." *Reuters*. Thomson Reuters, 27 Aug. 2013. Web. 04 Oct. 2013. <<http://blogs.reuters.com/great-debate/2013/08/26/nsa-listening-to-everyone-except-oversight/>>.

"It was the description of an agency on the path to going rogue and turning on its own citizens. But it was a description by **a body with only the power to protest — not to stop it or alert the public.**"

**Answer:** The NSA is not improving.

**Warrant:** Even if there is oversight, it is having little impact on the outcome as they have continued to violate the court's rules.

Gellman, Barton. "NSA Broke Privacy Rules Thousands of times per Year, Audit Finds." *Washington Post*. The Washington Post, 21 Aug. 2013. Web. 04 Oct. 2013. <[http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125_story.html)>.

**"The National Security Agency has broken privacy rules or overstepped its legal authority thousands of times each year since Congress granted the agency broad new powers in 2008,** according to an internal audit and other top-secret documents."

**Answer:** They are significantly impacting Americans.

**Warrant:** They break law and make "typos" that result in unintentional interceptions of U.S. private emails and telephone calls.

Gellman, Barton. "NSA Broke Privacy Rules Thousands of times per Year, Audit Finds." *Washington Post*. The Washington Post, 21 Aug. 2013. Web. 04 Oct. 2013. <[http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125_story.html)>.



**"Most of the infractions involve unauthorized surveillance of Americans or foreign intelligence targets in the United States, both of which are restricted by statute and executive order. They range from significant violations of law to typographical errors that resulted in unintended interception of U.S. e-mails and telephone calls."**

**Answer:** The errors are mostly typos.

**Warrant:** Aside from the fact that these typos retrieve unneeded private information, they also don't make up the majority of the violations.

Gellman, Barton. "NSA Broke Privacy Rules Thousands of times per Year, Audit Finds." *Washington Post*. The Washington Post, 21 Aug. 2013. Web. 04 Oct. 2013. <[http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125_story.html)>.

**"The causes and severity of NSA infractions vary widely. One in 10 incidents is attributed to a typographical error in which an analyst enters an incorrect query and retrieves data about U.S phone calls or e-mails."**

**Answer:** There are serious invasions of privacy.

**Warrant:** There is no protection for citizens as the system lacks built-in safeguards to prevent unlawful surveillance.

Gellman, Barton. "NSA Broke Privacy Rules Thousands of times per Year, Audit Finds." *Washington Post*. The Washington Post, 21 Aug. 2013. Web. 04 Oct. 2013. <[http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125_story.html)>.

**"But the more serious lapses include unauthorized access to intercepted communications, the distribution of protected content and the use of automated systems without built-in safeguards to prevent unlawful surveillance."**

**Answer:** The audit's results of violations is a severe underestimate.

**Warrant:** The audit doesn't take into account all NSA collection centers.

Gellman, Barton. "NSA Broke Privacy Rules Thousands of times per Year, Audit Finds." *Washington Post*. The Washington Post, 21 Aug. 2013. Web. 04 Oct. 2013. <[http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125_story.html)>.

**"The May 2012 audit, intended for the agency's top leaders, counts only incidents at the NSA's Fort Meade headquarters and other facilities in the Washington area. Three government officials, speaking on the condition of anonymity to discuss classified matters, said the number would be substantially higher if it included other NSA operating units and regional collection centers."**

**Warrant:** Each "incident" could include thousands of Americans' privacies being infringed upon.

Gellman, Barton. "NSA Broke Privacy Rules Thousands of times per Year, Audit Finds." *Washington Post*. The Washington Post, 21 Aug. 2013. Web. 04 Oct. 2013. <[http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125_story.html)>.

**"The documents provided by Snowden offer only glimpses of those questions. Some reports make clear that an unauthorized search produced no records. But a single**

**“incident” in February 2012 involved the unlawful retention of 3,032 files that the surveillance court had ordered the NSA to destroy, according to the May 2012 audit. Each file contained an undisclosed number of telephone call records.”**

**Answer:** Congressional oversight fails.

**Warrant:** The Senate Intelligence Committee's Chairman didn't even receive the audit.

Gellman, Barton. "NSA Broke Privacy Rules Thousands of times per Year, Audit Finds." *Washington Post*. The Washington Post, 21 Aug. 2013. Web. 04 Oct. 2013. <[http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125_story.html)>.

**"Senate Intelligence Committee Chairman Dianne Feinstein (D-Calif.), who did not receive a copy of the 2012 audit until The Post asked her staff about it, said in a statement late Thursday that the committee “can and should do more to independently verify that NSA’s operations are appropriate, and its reports of compliance incidents are accurate.””**

**Warrant:** Congressman can't even take the time to comprehend the documents and audits released by Snowden. They clearly can't provide oversight.

Gellman, Barton. "NSA Broke Privacy Rules Thousands of times per Year, Audit Finds." *Washington Post*. The Washington Post, 21 Aug. 2013. Web. 04 Oct. 2013. <[http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125_story.html)>.

**"Members of Congress may read the unredacted documents, but only in a special secure room, and they are not allowed to take notes. Fewer than 10 percent of lawmakers**

employ a staff member who has the security clearance to read the reports and provide advice about their meaning and significance."

**Warrant:** The NSA avoids all congressional oversight, as they aren't even made available to answer questions.

Leonnig, Carol D. "Court: Ability to Police U.S. Spying Program Limited." *Washington Post*. The Washington Post, 16 Aug. 2013. Web. 04 Oct. 2013.  
<[http://www.washingtonpost.com/politics/court-ability-to-police-us-spying-program-limited/2013/08/15/4a8c8c44-05cd-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/politics/court-ability-to-police-us-spying-program-limited/2013/08/15/4a8c8c44-05cd-11e3-a07f-49ddc7417125_story.html)>.

"Several members of the House and Senate intelligence committees told The Post last week that they face numerous obstacles and constraints in questioning spy agency officials about their work."

**Answer:** FISA doesn't receive all the details from the NSA.

**Warrant:** The NSA misrepresents how it functions to those who are supposed to oversee them.

Waterman, Shaun. "NSA Chief's Admission of Misleading Numbers Adds to Obama Administration Blunders." *The Washington Times*. The Washington Times, 2 Oct. 2013. Web. 04 Oct. 2013.  
<<http://www.washingtontimes.com/news/2013/oct/2/nsa-chief-figures-foiled-terror-plots-misleading/?page=all>>.

"In rulings declassified by the administration last month, **the secret Foreign Intelligence Surveillance Court chastised the NSA for repeatedly, if inadvertently, misrepresenting how it was following court-imposed restrictions on the use of the metadata in 2009.**"

**Warrant:** The NSA is deliberately lying to the courts and continuing unconstitutional practices.

Banford, James. "NSA: Listening to Everyone — except Oversight." *Reuters*. Thomson Reuters, 27 Aug. 2013. Web. 04 Oct. 2013. <<http://blogs.reuters.com/great-debate/2013/08/26/nsa-listening-to-everyone-except-oversight/>>.

"In the 2011 ruling, **the court's then chief judge, John D. Bates, harshly admonished the agency for repeatedly misleading the court about its warrantless eavesdropping on tens of thousands of domestic email messages and Internet web searches for the previous three years. In his unusually harsh rebuke, Bates warned that the NSA's operations had violated the Constitution and exemplified a pattern of misrepresentation to the court** — what most people would call lies — by agency officials. "The court," wrote Bates, "is troubled that the government's revelations regarding N.S.A.'s acquisition of Internet transactions mark the third instance in less than three years in which the government has disclosed a substantial misrepresentation regarding the scope of a major collection program." Using such tough phrases as, "repeated inaccurate statements," "contrary to the government's repeated assurances" and "frequently and systematically violated," the judge made clear that the NSA's actions were both systemic and deliberate."

**Answer:** NSA is not improving.

**Warrant:** The NSA has witnessed a 11% increase in compliance incidents.

Sanchez, Julian. "Where's the Oversight on NSA Spying?" *POLITICO*. Politico, 16 Aug. 2013. Web. 04 Oct. 2013. <<http://www.politico.com/story/2013/08/opinion-nsa-spying-95632.html>>.

"**The audit memorandum paints a less rosy picture: It measured an 11 percent increase in compliance incidents during the first quarter of 2012 over the last quarter of the previous year.** The *Post* also notes that the NSA determined it did not have to report one

incident, involving accidental large-scale collection of data about calls from Washington, D.C., at all."

**Analysis:** Oversight doesn't succeed. There has been little to no improvements by the NSA, as they continue to avoid oversight by both Congress and the FICA courts.

## **PRO – NSA Social Connection Analysis**

**Argument:** The NSA is gathering data on social connections of US citizens.

James Risen and Laura Poitras, The New York Times. (September 28, 2013) N.S.A.  
Gathers Data on Social Connections of U.S. Citizens - NYTimes.com. Retrieved  
October 06, 2013, from [www.nytimes.com/2013/09/29/us/nsa-examines-social-networks-of-us-citizens.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/09/29/us/nsa-examines-social-networks-of-us-citizens.html?pagewanted=all&_r=0)

**“Since 2010, the National Security Agency has been exploiting its huge collections of data to create sophisticated graphs of some Americans’ social connections that can identify their associates, their locations at certain times, their traveling companions and other personal information, according to newly disclosed documents and interviews with officials. The spy agency began allowing the analysis of phone call and e-mail logs in November 2010 to examine Americans’ networks of associations for foreign intelligence purposes after N.S.A. officials lifted restrictions on the practice, according to documents provided by Edward J. Snowden, the former N.S.A. contractor.”**

**Argument:** This improves national security.

**Warrant:** This now allows the NSA to track connections between intelligence targets overseas and people in the US.

James Risen and Laura Poitras, The New York Times. (September 28, 2013) N.S.A.  
Gathers Data on Social Connections of U.S. Citizens - NYTimes.com. Retrieved  
October 06, 2013, from [www.nytimes.com/2013/09/29/us/nsa-examines-social-networks-of-us-citizens.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/09/29/us/nsa-examines-social-networks-of-us-citizens.html?pagewanted=all&_r=0)

**“The policy shift was intended to help the agency “discover and track” connections between intelligence targets overseas and people in the United States, according to an**

N.S.A. memorandum from January 2011. The agency was authorized to conduct “large-scale graph analysis on very large sets of communications metadata without having to check foreignness” of every e-mail address, phone number or other identifier, the document said. Because of concerns about infringing on the privacy of American citizens, the computer analysis of such data had previously been permitted only for foreigners.”

**Warrant:** The NSA then compares these connections with publicly available information.

James Risen and Laura Poitras, The New York Times. (September 28, 2013) N.S.A. Gathers Data on Social Connections of U.S. Citizens - NYTimes.com. Retrieved October 06, 2013, from [www.nytimes.com/2013/09/29/us/nsa-examines-social-networks-of-us-citizens.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/09/29/us/nsa-examines-social-networks-of-us-citizens.html?pagewanted=all&_r=0)

**“The agency can augment the communications data with material from public, commercial and other sources**, including bank codes, insurance information, Facebook profiles, passenger manifests, voter registration rolls and GPS location information, as well as property records and unspecified tax data, according to the documents. They do not indicate any restrictions on the use of such “enrichment” data, and several former senior Obama administration officials said the agency drew on it for both Americans and foreigners.”

**Argument:** This program does not unnecessarily violate privacy.

**Warrant:** Searches have to have a foreign intelligence justification.

James Risen and Laura Poitras, The New York Times. (September 28, 2013) N.S.A. Gathers Data on Social Connections of U.S. Citizens - NYTimes.com. Retrieved October 06, 2013, from [www.nytimes.com/2013/09/29/us/nsa-examines-social-networks-of-us-citizens.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/09/29/us/nsa-examines-social-networks-of-us-citizens.html?pagewanted=all&_r=0)



“An agency spokeswoman, asked about the analyses of Americans’ data, said, “All data queries must include a foreign intelligence justification, period.” “All of N.S.A.’s work has a foreign intelligence purpose,” the spokeswoman added. “Our activities are centered on counterterrorism, counterproliferation and cybersecurity.”

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**A/2 – NSA Social Connection Analysis**

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**Answer:** Metadata is more revealing than actually listening to phone conversations.

James Risen and Laura Poitras, The New York Times. (September 28, 2013) N.S.A.

Gathers Data on Social Connections of U.S. Citizens - NYTimes.com. Retrieved October 06, 2013, from [www.nytimes.com/2013/09/29/us/nsa-examines-social-networks-of-us-citizens.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/09/29/us/nsa-examines-social-networks-of-us-citizens.html?pagewanted=all&_r=0)

“The spy agency, led by Gen. Keith B. Alexander, an unabashed advocate for more weapons in the hunt for information about the nation’s adversaries, clearly views its collections of metadata as one of its most powerful resources. **N.S.A. analysts can exploit that information to develop a portrait of an individual, one that is perhaps more complete and predictive of behavior than could be obtained by listening to phone conversations or reading e-mails**, experts say. Phone and e-mail logs, for example, allow analysts to identify people’s friends and associates, detect where they were at a certain time, acquire clues to religious or political affiliations, and pick up sensitive information like regular calls to a psychiatrist’s office, late-night messages to an extramarital partner or exchanges with a fellow plotter.

“Metadata can be very revealing,” said Orin S. Kerr, a law professor at George Washington University. **“Knowing things like the number someone just dialed or the location of the person’s cellphone is going to allow them to assemble a picture of what someone is up to. It’s the digital equivalent of tailing a suspect.”**

**Answer:** The NSA disputes the New York Times’ characterization of the program.

Stephen Braun, Associated Press. (October 2, 2013) NSA: Social Network Searches, but No Dossiers - ABC News. Retrieved October 06, 2013, from [abcnews.go.com/Politics/wireStory/nsa-social-network-searches-dossiers-20445024](http://abcnews.go.com/Politics/wireStory/nsa-social-network-searches-dossiers-20445024)

"The director of the National Security Agency says the agency collects data from social networks and other private databases to hunt terror suspects but is not using the information to build dossiers, or personal files, on Americans. NSA Director Gen. Keith Alexander testified during a Senate Judiciary Committee hearing Wednesday that not all social network searches are authorized by a secret Foreign Intelligence Surveillance court, but the agency's actions are proper and audited internally. Alexander called a recent New York Times report on the searches "inaccurate and wrong." The Times report did not specifically cite dossiers, but said the NSA was exploiting huge collections of personal data to create sophisticated graphs of some Americans' social connections. The Times said the private data includes bank, flight, GPS location and voting records."

**Answer:** The "foreign" aspect of the search is just an excuse that allows Americans to be profiled.

Mike Masnick, Techdirt. (September 30, 2013) NSA Has Built Its Own, Secret, Warrantless, Shadow Social Network, And You've Already Joined It | Techdirt. Retrieved October 06, 2013, from [www.techdirt.com/articles/20130928/22450824685/nsa-has-built-its-own-secret-warrantless-shadow-social-network-youve-already-joined-it.shtml](http://www.techdirt.com/articles/20130928/22450824685/nsa-has-built-its-own-secret-warrantless-shadow-social-network-youve-already-joined-it.shtml)

"Note the continued shift in language. For a while, they kept saying that the NSA does no surveillance on Americans at all. At all! They insisted that would be illegal. **Then, later, people started to note that they would use the phrase "targeting foreign intelligence" which had just enough (barely) wiggle room to get people to think that they were only looking at non-US person data and content, but really meant as long as the overall investigation "targeted" foreign intelligence, it was fine.** Now they're even walking back from that, and saying that apparently it's fine to spy on Americans without a warrant so long as there's "a foreign intelligence justification." **In short: if you can come up with some excuse for how it might impact something foreign, the NSA can spy on Americans without a warrant.**

**That's no limitation at all. In fact, such a rule is meaningless.** We already know that the NSA gets **every telephone record** handed over because they claim it's "necessary" to "connect the dots" on foreign terror plots. And, similarly, now they're arguing that they can look at anything else so long as they claim that there's a "foreign intelligence justification." That means they have no limits. They just have to come up with some wacky reason to claim that so-and-so might have foreign connections that are important to know about, and voila, their life is open for the NSA to dig in, all without any oversight or a warrant.”

**Analysis:** Most of the debates on this topic will be about the NSA’s PRISM program and other established surveillance programs. However, these programs are not necessarily the only ways in which the NSA operates, as this New York Times article from last week indicates. As the month goes on, debaters on this topic should check the news regularly for information on “new” NSA programs that news agencies and whistleblowers release. A social network program created by the NSA can both be useful for fighting terrorism and detrimental to personal liberty. Although this argument needs to be developed more, it is one that can definitely grow throughout the month.

**PRO – NSA Stops Terrorism**

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**Argument:** The NSA program cracks down on terrorism by tracing suspicious activity and communication related to these violent organizations. Although it may not be blatantly clear how much terrorism these programs have stopped, they certainly have served as a deterrent.

**Warrant:** The benefits of stopping terrorism stretches outside of just the U.S.

"Officials: NSA Programs Broke Terror Plots in 20 Nations." *CBSNews*. CBS Interactive, 15 June 2013. Web. 04 Oct. 2013. <[http://www.cbsnews.com/8301-201\\_162-57589502/officials-nsa-programs-broke-terror-plots-in-20-nations/](http://www.cbsnews.com/8301-201_162-57589502/officials-nsa-programs-broke-terror-plots-in-20-nations/)>.

**"Top U.S. intelligence officials said Saturday that information gleaned from two controversial data-collection programs run by the National Security Agency thwarted potential terrorist plots in the U.S. and more than 20 other countries — and that gathered data is destroyed every five years."**

**Warrant:** Our privacy is protected, unless we are engaging with terrorists. Moreover, without pools of information about activity in the U.S., we cannot connect foreign intel to the intel on our homeland.

Thiessen, Marc A. "Big Brother Isn't Watching You." *Washington Post*. The Washington Post, 10 June 2013. Web. 04 Oct. 2013.  
<[http://www.washingtonpost.com/opinions/marc-thiessen-leaks-not-the-nsa-programs-deserve-condemnation/2013/06/10/e91d09ac-d1c9-11e2-a73e-826d299ff459\\_story.html](http://www.washingtonpost.com/opinions/marc-thiessen-leaks-not-the-nsa-programs-deserve-condemnation/2013/06/10/e91d09ac-d1c9-11e2-a73e-826d299ff459_story.html)>.

"One former national security official explained it to me this way: **If you want to connect the dots and stop the next attack, you need to have a “field of dots.” That is what the NSA is collecting. But it doesn’t dip into that field unless it comes up with a**

**new “dot” — for example, a new terrorist phone number found on a cellphone captured in a raid. It will then plug that new “dot” into the “field of dots” to find out which dots are connected to the new number. If you are not communicating with that terrorist, your dot is not touched. But the NSA needs to have the entire field of dots so it can unravel the network connected to that terrorist.**"

**Warrant:** 9/11 could have been stopped with the NSA program.

Waterman, Shaun. "NSA Chief's Admission of Misleading Numbers Adds to Obama Administration Blunders." *Washington Times*. The Washington Times, 2 Oct. 2013. Web. 4 Oct. 2013.

<<http://www.washingtontimes.com/news/2013/oct/2/nsa-chief-figures-foiled-terror-plots-misleading/?page=all#pagebreak>>.

**"Sen. Lindsey Graham, South Carolina Republican, baldly stated that the metadata program would have thwarted the Sept. 11 plot because at least one of the 19 hijackers was in telephone contact with a known terrorist facility in the Middle East."**

**Warrant:** The 50 plots potentially thwarted go along with estimates provided by the Heritage Foundation.

Bucci, Steven. "NSA Spying Stops Terrorism but Should Also Respect Liberties." *The Heritage Foundation*. The Heritage Foundation, 18 June 2013. Web. 04 Oct. 2013. <<http://blog.heritage.org/2013/06/18/nsa-spying-stops-terrorism-but-should-also-respect-liberties/>>.

**"For the first time, he revealed that more than 50 incidents of potential terrorism were stopped by the set of programs under scrutiny. He emphasized that he was working to declassify these incidents so they could be shared with the American people. These revelations come as no surprise to us. Heritage research has noted 54 foiled terrorist**

**plots since 9/11. Given that we know of only three that were not stopped by intelligence (the shoe bomber, the underwear bomber, and the Times Square bomber), this means that these NSA programs might well have played a significant role in thwarting dozens of uncovered plots."**

**Logic:** Terrorists know they can't communicate by phone and email now, making it harder to be a terrorist, while also acting as a deterrent to joining terrorist activity.

**Analysis:** Although many are skeptical of how much terrorism these NSA programs have stopped, logically the system works, and the reported (though partially classified) results match up with disruptions in terrorist activities.

**A/2 – NSA Stops Terrorism**

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**Answer:** Examples of NSA intelligence stopping terrorism don't hold up.

**Warrant:** The NSA intelligence failed to prevent an attack and it only affected someone with little importance to the terrorist operations.

Mueller, John, and Mark Stewart. "3 Questions About NSA Surveillance." *The Conversation*. The Chronicle of Higher Education, 13 June 2013. Web. 04 Oct. 2013. <<http://chronicle.com/blogs/conversation/2013/06/13/3-questions-about-nsa-surveillance/>>.

**"First, there have been suggestions that the NSA programs helped apprehend an American who had done surveillance work for the terrorist gunmen in Mumbai, India, in 2008. His efforts, however, were of limited importance to the event, and his eventual arrest didn't prevent the attack."**

**Warrant:** The Zazi case proves that NSA intelligence isn't necessary.

Mueller, John, and Mark Stewart. "3 Questions About NSA Surveillance." *The Conversation*. The Chronicle of Higher Education, 13 June 2013. Web. 04 Oct. 2013. <<http://chronicle.com/blogs/conversation/2013/06/13/3-questions-about-nsa-surveillance/>>.

**"The second was the 2009 Zazi case, in which three Afghan-Americans trained in Pakistan before returning to the United States and plotted to set off bombs in the New York subway system. Given the perpetrators' limited capacities, it is questionable whether the plot would ever have succeeded. Furthermore, the plot was disrupted not by NSA data-dredgers but by standard surveillance: British intelligence provided a hot tip about Zazi based on e-mail traffic to a known**



**terrorist address—one that had long been watched.** At that point, U.S. authorities had good reason to put the plotters on their radar. **Having NSA’s megadata collection may have been helpful, but it seems scarcely to have been required. Actually, it is not clear that even the tip was necessary because the plotters foolishly called attention to themselves by using stolen credit cards to purchase large quantities of potential bomb material."**

**Answer:** The NSA reports that its impact on terrorism is minimal.

**Warrant:** General Keith Alexander admitted that impacts of the NSA on terrorism are extremely limited.

Waterman, Shaun. "NSA Chief’s Admission of Misleading Numbers Adds to Obama Administration Blunders." *Washington Times*. The Washington Times, 2 Oct. 2013. Web. 4 Oct. 2013.  
<<http://www.washingtontimes.com/news/2013/oct/2/nsa-chief-figures-foiled-terror-plots-misleading/?page=all#pagebreak>>.

"Pressed by the Democratic chairman of the Senate Judiciary Committee at an oversight hearing, **Gen. Keith B. Alexander admitted that the number of terrorist plots foiled by the NSA’s huge database of every phone call made in or to America was only one or perhaps two** — far smaller than the 54 originally claimed by the administration."

**Warrant:** The original estimates of over 50 plots foiled weren't all real threats and not all were completely foiled.

Waterman, Shaun. "NSA Chief’s Admission of Misleading Numbers Adds to Obama Administration Blunders." *Washington Times*. The Washington Times, 2 Oct. 2013. Web. 4 Oct. 2013.  
<<http://www.washingtontimes.com/news/2013/oct/2/nsa-chief-figures-foiled-terror-plots-misleading/?page=all#pagebreak>>.

“‘There is no evidence that [bulk] phone records collection helped to thwart dozens or even several terrorist plots,’ Sen. Patrick J. Leahy, Vermont Democrat and committee chairman, told Gen. Alexander of the 54 cases that administration officials — including **the general himself** — **have cited as the fruit of the NSA’s domestic snooping**. ‘These weren’t all plots and they weren’t all foiled,’ he said.”

**Answer:** The NSA didn't even foil the plots; they were foiled by other means.

**Warrant:** The plots cited by the General were foiled by other means, demonstrating that the NSA is unnecessary.

Bergen, Peter. "Did NSA Snooping Stop 'dozens' of Terrorist Attacks?" *CNN*. Cable News Network, 17 June 2013. Web. 4 Oct. 2013.  
<<http://www.cnn.com/2013/06/17/opinion/bergen-nsa-spying/index.html>>.

"On Thursday, **Sens. Ron Wyden and Mark Udall**, Democrats **who both serve on the Senate Select Committee on Intelligence and have access to the nation's most sensitive secrets, released a statement** contradicting this assertion. "Gen. Alexander's testimony yesterday suggested **that** the NSA's bulk phone records collection program helped thwart 'dozens' of terrorist attacks, but **all of the plots that [the General] mentioned appear to have been identified using other collection methods**," the two senators said."

**Answer:** The NSA is unnecessary to fight terrorism.

**Warrant:** Traditional law enforcement has stopped terrorist acts not the NSA.

Bergen, Peter. "Did NSA Snooping Stop 'dozens' of Terrorist Attacks?" *CNN*. Cable News Network, 17 June 2013. Web. 4 Oct. 2013.  
<<http://www.cnn.com/2013/06/17/opinion/bergen-nsa-spying/index.html>>.

**"Indeed, a survey of court documents and media accounts of all the jihadist terrorist plots in the United States since 9/11 by the New America Foundation shows that traditional law enforcement methods have overwhelmingly played the most significant role in foiling terrorist attacks."**

**Answer:** More information is not more knowledge.

**Warrant:** The NSA inundates itself with useless information, harming its chances of identifying what information could actually stop a terrorist attack.

Schneier, Bruce. "Could U.S. Have Stopped Syria's Chemical Attack?" *CNN*. Cable News Network, 11 Sept. 2013. Web. 04 Oct. 2013.  
<<http://www.cnn.com/2013/09/11/opinion/schneier-intelligence-limitation>>.

**"The NSA serves as an example. The agency measures its success by amount of data collected, not by information synthesized or knowledge gained. But it's knowledge that matters. The NSA's belief that more data is always good, and that it's worth doing anything in order to collect it, is wrong. There are diminishing returns, and the NSA almost certainly passed that point long ago. But the idea of trade-offs does not seem to be part of its thinking. The NSA missed the Boston Marathon bombers, even though the suspects left a really sloppy Internet trail and the older brother was on the terrorist watch list."**

**Analysis:** First, indict the exaggerated claims by the NSA that say they have stopped many terrorist incidents. Then turn terrorism against them by explaining that the NSA's approach of going for quantity over quality prevents them from successfully stopping terrorism.

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**PRO – NSA Has Improved Their Security**

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**Argument:** New security measures solve for past harms. The resolution is asking if the NSA poses harms now, not if it has in the past.

**Warrant:** The NSA has taken massive steps to cut back on the amount of people who can access government information.

Allen, Joathan. "NSA to Cut System Administrators by 90 Percent to Limit Data Access." *Reuters*. N.p., 8 Aug. 2013. Web. 7 Oct. 2013.  
<<http://www.reuters.com/article/2013/08/09/us-usa-security-nsa-leaks-idUSBRE97801020130809>>.

**“The National Security Agency, hit by disclosures of classified data by former contractor Edward Snowden, said Thursday it intends to eliminate about 90 percent of its system administrators to reduce the number of people with access to secret information. Keith Alexander, the director of the NSA, the U.S. spy agency charged with monitoring foreign electronic communications, told a cybersecurity conference in New York City that automating much of the work would improve security. "What we're in the process of doing - not fast enough - is reducing our system administrators by about 90 percent," he said. The remarks came as the agency is facing scrutiny after Snowden, who had been one of about 1,000 system administrators who help run the agency's networks, leaked classified details about surveillance programs to the press.**

**Warrant:** Increasing technology does a better job than the fired employees it is replacing.

Allen, Joathan. "NSA to Cut System Administrators by 90 Percent to Limit Data Access." *Reuters*. N.p., 8 Aug. 2013. Web. 7 Oct. 2013.

<<http://www.reuters.com/article/2013/08/09/us-usa-security-nsa-leaks-idUSBRE97801020130809>>.

**“Before the change, "what we've done is we've put people in the loop of transferring data, securing networks and doing things that machines are probably better at doing," Alexander said. Using technology to automate much of the work now done by employees and contractors would make the NSA's networks "more defensible and more secure," as well as faster, he said at the conference, in which he did not mention Snowden by name. These efforts pre-date Snowden's leaks, the agency has said, but have since been accelerated. Alexander's remarks largely echoed similar comments made to Congress and at other public appearances over the past two months since his agency came under fire from civil liberties advocates and lawmakers concerned by Snowden's revelations. Snowden leaked documents to the Guardian and the Washington Post, which published stories revealing previously secret telephone and internet surveillance programs run by the U.S. government. Snowden now faces criminal charges but has since been granted temporary asylum in Russia.”**

**Warrant:** The risk of humans leaking technology is much lower now with new tandem working efforts.

Allen, Joathan. "NSA to Cut System Administrators by 90 Percent to Limit Data Access."

*Reuters*. N.p., 8 Aug. 2013. Web. 7 Oct. 2013.

<<http://www.reuters.com/article/2013/08/09/us-usa-security-nsa-leaks-idUSBRE97801020130809>>.

“Other security measures that Alexander has previously discussed include requiring at least two people to be present before certain data can be accessed on the agency's computer systems. "At the end of the day it's about people and trust," Alexander said. He again defended his agency's conduct, much of which he said had been "grossly mischaracterized" by the press. "No one has willfully or knowingly disobeyed the law or tried to invade your civil liberties or privacies," he said. "There were no mistakes like that

at all." He told his audience to "get the facts" and make up their own minds, adding that the agency itself could do more to enable this: "We've got to push out more, I recognize that," he said."

**Warrant:** The media is overdramatizing the situation because the system works and prevents attacks on US citizens.

Allen, Joathan. "NSA to Cut System Administrators by 90 Percent to Limit Data Access." *Reuters*. N.p., 8 Aug. 2013. Web. 7 Oct. 2013.  
<<http://www.reuters.com/article/2013/08/09/us-usa-security-nsa-leaks-idUSBRE97801020130809>>.

"But Brennan said technology "can only do so much" to limit leaks, and that training is also a key. NSA chief General Keith Alexander discusses Sen. Wyden's remarks, hecklers and what he thinks should happen to leaker Edward Snowden. With CNBC's Eamon Javers. **The three also defended the controversial surveillance programs, which Alexander said have been "grossly mischaracterized by the press."** "No one has knowingly or willfully disobeyed the law," Alexander said, echoing President Obama's comment on NBC's Tonight Show this week that **"there is no domestic spying program."** But Alexander said modern technology makes surveillance necessary. "The real issue is the devices you use, terrorists use," Alexander said. Brennan said the intelligence community is "trying to optimize national security ... and optimize privacy," but noted that in the Internet age, privacy has a different meaning than it used to have. **The three did not address the security threat that has led to the closing of 19 U.S. diplomatic posts worldwide this week.** They would not answer questions from the media, responding only to pre-screened questions from the audience of cyber security specialists."

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## A/2 – NSA Has Improved Their Security

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**Answer:** A harm is a harm, regardless if you are trying to reduce it.

**Warrant:** NSA makes it easier for everyone to hack domestic and abroad.

Cohn, Cindy, and Trevor Timm. "The NSA Is Making Us All Less Safe | Electronic Frontier Foundation." *Electronic Frontier Foundation*. N.p., Oct.-Nov. 2013. Web. 07 Oct. 2013. <<https://www.eff.org/deeplinks/2013/10/nsa-making-us-less-safe>>.

“By weakening encryption, the NSA allows others to more easily break it. By installing backdoors and other vulnerabilities in systems, the NSA exposes them to other malicious hackers—whether they are foreign governments or criminals. As security expert Bruce Schneier explained, “It’s sheer folly to believe that only the NSA can exploit the vulnerabilities they create.”

**Warrant:** There are numerous examples of this breach of security that makes it easier for hackers.

Cohn, Cindy, and Trevor Timm. "The NSA Is Making Us All Less Safe | Electronic Frontier Foundation." *Electronic Frontier Foundation*. N.p., Oct.-Nov. 2013. Web. 07 Oct. 2013. <<https://www.eff.org/deeplinks/2013/10/nsa-making-us-less-safe>>.

**“The New York Times presented internal NSA documents with some specifics. They are written in bureaucratese, but we have some basic translations: “Insert vulnerabilities into commercial encryption systems, IT systems, networks and endpoint communications devices used by targets”— Sabotage our systems by inserting backdoors and otherwise weakening them if there’s a chance that a “target” might**

also use them. **"actively engages US and foreign IT industries to covertly influence and/or overtly leverage their commercial products' designs"** — Secretly infiltrate companies to conduct this sabotage, or work with companies to build in weaknesses to their systems, or coerce them into going along with it in secret **"Shape the worldwide commercial cryptography marketplace to make it more tractable to advanced cryptanalytic capabilities being developed by NSA/CSS — Ensure that the global market only has compromised systems, so that people don't have access to the safest technology. "These design changes make the systems in question exploitable through Sigint collection ... with foreknowledge of the modification. To the consumer and other adversaries, however, the systems' security remains intact."** — Make sure no one knows that the systems have been compromised. **"influence policies, standards and specifications for commercial public key technologies"** — **Make sure that the standards that everyone relies on have vulnerabilities that are hidden from users. Each of these alone would be terrible for security; collectively they are a nightmare.** They are also a betrayal of the very public political process we went through in the 1990s to ensure that technology users had access to real security tools to keep them safe."

**Warrant:** The NSA abuses the internet to intentionally make it not a safe place.

Cohn, Cindy, and Trevor Timm. "The NSA Is Making Us All Less Safe | Electronic Frontier Foundation." *Electronic Frontier Foundation*. N.p., Oct.-Nov. 2013. Web. 07 Oct. 2013. <<https://www.eff.org/deeplinks/2013/10/nsa-making-us-less-safe>>.

"Making matters worse, the NSA put itself on the front lines of "cybersecurity" debate, ostensibly because it was concerned about computer security of ordinary people and businesses. That is supposed to be one of NSA's roles. **Yet, one of the most disturbing anecdotes from the New York Times story on encryption was the NSA meeting confidentially with companies under the guise of helping with cybersecurity but then using information they gleaned to weaken systems or induce the companies to do so: "Even agency programs ostensibly intended to guard American**



**communications are sometimes used to weaken protections. The N.S.A.’s Commercial Solutions Center, for instance, invites the makers of encryption technologies to present their products to the agency with the goal of improving American cybersecurity. But a top-secret N.S.A. document suggests that the agency’s hacking division uses that same program to develop and ‘leverage sensitive, cooperative relationships with specific industry partners’ to insert vulnerability”**

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**PRO – The NSA Leaks Improve U.S. Technology Industry**

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**Argument:** The recent leaks have caused a much-needed boom in the tech industry.

**Warrant:** The leaks have caused tech companies to avoid intelligence, which increases consumer confidence in technology.

Menn, Joseph. "How The NSA Revelations May Actually Be Helping The US Tech Industry." *Business Insider*. N.p., 15 Sept. 2013. Web. 07 Oct. 2013.  
<<http://www.businessinsider.com/how-the-nsa-revelations-may-actually-be-help-the-us-tech-industry-2013-9>>.

**“Edward Snowden's unprecedented exposure of U.S. technology companies' close collaboration with national intelligence agencies, widely expected to damage the industry's financial performance abroad, may actually end up helping. Despite emphatic predictions of waning business prospects, some of the big Internet companies that the former National Security Agency contractor showed to be closely involved in gathering data on people overseas - such as Google Inc. and Facebook Inc. - say privately that they have felt little if any impact on their businesses. Insiders at companies that offer remote computing services known as cloud computing, including Amazon and Microsoft Corp, also say they are seeing no fallout.”**

**Warrant:** Encryption Companies are booming as a result of NSA surveillance.

Menn, Joseph. "How The NSA Revelations May Actually Be Helping The US Tech Industry." *Business Insider*. N.p., 15 Sept. 2013. Web. 07 Oct. 2013.  
<<http://www.businessinsider.com/how-the-nsa-revelations-may-actually-be-help-the-us-tech-industry-2013-9>>.

**“As for the upside, so far only a minority of people and businesses are tackling**

encryption on their own or moving to privacy-protecting Web browsers, but encryption is expected to get easier with more new entrants. Snowden himself said that strong encryption, applied correctly, was still reliable, even though the NSA has cracked or circumvented most of the ordinary, built-in security around Web email and **financial transactions**. James Denaro, a patent attorney with security training in Washington, was already using Pretty Good Privacy (PGP), a complicated system for encrypting email, before the Snowden leaks. Afterward, he adopted phone and text encryption as well to protect client information. **"One of the results we see from Snowden is an increased awareness across the board about the incredible cyber insecurity," Denaro said."**

**Warrant:** Now companies domestic and abroad are seeking private encryption, making the industry boom.

Menn, Joseph. "How The NSA Revelations May Actually Be Helping The US Tech Industry." *Business Insider*. N.p., 15 Sept. 2013. Web. 07 Oct. 2013.  
<<http://www.businessinsider.com/how-the-nsa-revelations-may-actually-be-help-the-us-tech-industry-2013-9>>.

**"Clients are now inquiring how they can protect their data overseas, what kinds of access the states might have and what controls or constraints they could put in with residency or encryption,"** said Gartner researcher Lawrence Pingree, formerly chief security architect at PeopleSoft, later bought by Oracle. Richard Stiennon, a **security industry** analyst and author, predicted that security spending will rise sharply. A week ago, Google said it had intensified encryption of internal data flows after learning about NSA practices from Snowden's files, and consultants are urging other big businesses to do the same. Stiennon said that after more companies encrypt, the NSA and other agencies will spend more to break through, accelerating a lucrative cycle. **"They will start focusing on the encrypted data, because that's where all the good stuff is," Stiennon said."**

**Warrant:** Private development for encrypting is becoming a top priority for the intelligence community.

Menn, Joseph. "How The NSA Revelations May Actually Be Helping The US Tech Industry." *Business Insider*. N.p., 15 Sept. 2013. Web. 07 Oct. 2013.  
<<http://www.businessinsider.com/how-the-nsa-revelations-may-actually-be-help-the-us-tech-industry-2013-9>>.

“Already, in a fiscal 2013 federal budget request from the intelligence community published this month by the Washington Post, officials wrote that investing in "groundbreaking cryptanalytic capabilities" was a top priority.”

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## A/2 – The NSA Leaks Improve U.S. Technology Industry

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**Answer:** The technology benefits are minimal, and NSA kills the US' global competitiveness.

**Warrant:** Countries are weary of using technology to trade with or work with the US.

Stiennon, Richard. "NSA Surveillance Threatens US Competitiveness." *Forbes*. Forbes Magazine, 07 June 2013. Web. 07 Oct. 2013.  
<<http://www.forbes.com/sites/richardstiennon/2013/06/07/nsa-surveillance-threatens-us-competitiveness/>>.

“We are told we live in a digital world and the future is bright for tech startups as costs of launching new products and services plummet and global markets open up to the smallest vendor. **Yet, there is a world wide perception that any data that is stored or even routed through the United States is sucked into cavernous NSA data centers for analysis and cataloging. That perception was solidified in 2006 when former AT&T technician Mark Klein blew the whistle on the fiber tap that ATT had provided to the NSA in some of its data centers. Those perceptions have had real consequences for US tech firms seeking to offer global services. Email archiving services such as ProofPoint could not sell to even Canadian customers without building local infrastructure. Even establishing separate data centers in Canada and Europe is not enough to assure customers that their data would forever stay out of the grasp of US intelligence services.**”

**Warrant:** The Fear of NSA spying kills online cloud companies from spreading abroad.

Stiennon, Richard. "NSA Surveillance Threatens US Competitiveness." *Forbes*. Forbes Magazine, 07 June 2013. Web. 07 Oct. 2013.  
<<http://www.forbes.com/sites/richardstiennon/2013/06/07/nsa-surveillance-threatens-us-competitiveness/>>.

**“One of the fastest growing segments of the tech industry is cloud services, with Salesforce.com one of the leading examples. Box.net, and other cloud storage solutions, are burgeoning. Cloud infrastructure providers like Amazon, Microsoft, and Rackspace are investing billions to serve markets that should be global but will be barred from most countries thanks to the complete abandonment of trust caused by NSA/FBI spying. Since 2006, every time I present outside the US the same question has been asked: “Is the US reading our email?” Answers that allude to ‘protections from abuse’ and ‘oversight’ now seem specious. From this week forward a universal suspicion has transformed into acknowledged fact. Yes, US government agencies are reading email, tracking phone calls, and monitoring all communications.”**

**Warrant:** The Fear of NSA kills current and future US innovation.

Stiennon, Richard. "NSA Surveillance Threatens US Competitiveness." *Forbes*. Forbes Magazine, 07 June 2013. Web. 07 Oct. 2013.  
<<http://www.forbes.com/sites/richardstiennon/2013/06/07/nsa-surveillance-threatens-us-competitiveness/>>.

**“Trust is the very foundation of all commerce. Once lost it is almost impossible to regain. This week’s revelations that the NSA has blanket data harvesting arrangements with Verizon, ATT, Sprint-Nextel, Google, Microsoft, Apple, Skype, Yahoo, FaceBook and even credit card processors, will have immediate repercussions. Non-US customers of any US business will immediately evaluate their exposure to these new risks and look for alternatives. European, Canadian, and Australian tech companies will profit from this. Competitors in those regions will offer alternatives that will also draw US customers away from the compromised US services. While the FBI and NSA leverage the dramatic intelligence opportunities of a digital world, their Orwellian actions are crushing opportunity for tech giants and startups in the United States.”**

**Argument:** US-EU trade is on the brink of happening, but NSA is preventing it.

**Warrant:** The Fear of NSA kills current and future US innovation.

"American Surveillance May Kill US-EU Free-trade Talks - RT Business." *Russian Times*. N.p., 1 July 2013. Web. 07 Oct. 2013. <<http://rt.com/business/nsa-free-trade-spying-477/>>.

**“The ‘biggest bilateral trade deal in history’, reached at the G8 Summit, is possibly at risk as rapport between the US and EU quickly degenerates over leaks which reveal the US allegedly spied on EU diplomats. The trade relationship, valued at hundreds of billions of dollars, could boost economic growth on both sides of the Atlantic, and potentially be a key factor in ending the economic downturn. EU leaders are demanding answers after leaked NSA documents revealed the US was tracking diplomatic communications, an accusation, if proved true, could derail the historic free-trade deal. Both France and Germany, Europe’s largest and second largest economy have both responded strongly to the alleged spying practices.”**

**Warrant:** The Fear of NSA kills current and future US innovation.

"American Surveillance May Kill US-EU Free-trade Talks - RT Business." *Russian Times*. N.p., 1 July 2013. Web. 07 Oct. 2013. <<http://rt.com/business/nsa-free-trade-spying-477/>>.

**“Before treaty procedures move forward, the EU will want more transparency from the US. Other EU officials felt vulnerable heading into diplomatic negotiations with a party that has listened in on classified information beforehand. The agreement would be a “once in a generation prize,” which could add as much as \$157 billion to the EU economy, over \$125 billion to the US economy and as much as around \$133 billion to the rest of the world, British Prime Minister David Cameron said at the summit, adding it could add two million extra jobs, more choices and lower**

**consumer prices.** Lode Vanoost, former deputy speaker of the Belgian parliament, believes the main purpose of the US surveillance program was “economic spying” on the EU, seeing a connection between economic decline and the need to spy. *“One consequence [of the Snowden leak] for sure is that people will ask, ‘Does it make sense to negotiate a free-trade agreement without clear rules about data protection and control?’”* European Parliament President Martin Schulz told reporters in Brussels.”



**PRO – Data Mining Necessary And Moral**

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**General Information:** How the data mining process works.

Joe Pappalardo. “NSA Data Mining: How It Works.” Web. October 04, 2013

<[www.popularmechanics.com/technology/military/news/nsa-data-mining-how-it-works-15910146](http://www.popularmechanics.com/technology/military/news/nsa-data-mining-how-it-works-15910146)>.

“Here are the basic steps: To start, one of 11 judges on a secret Foreign Intelligence Surveillance (FISA) Court accepts an application from a government agency to authorize a search of data collected by the NSA. Once authorized—and most applications are—data-mining requests first go to the FBI's Electronic Communications Surveillance Unit (ECSU), according to PowerPoint slides taken by Snowden. This is a legal safeguard—FBI agents review the request to ensure no U.S. citizens are targets. The ECSU passes appropriate requests to the FBI Data Intercept Technology Unit, which obtains the information from Internet company servers and then passes it to the NSA to be examined with data-mining programs. (Many communications companies have denied they open their servers to the NSA; federal officials claim they cooperate. As of press time, it's not clear who is correct.) The NSA then passes relevant information to the government agency that requested it.”

**Argument:** Data mining, as is used in the PRISM program, is logical and effective.

**Warrant:** Data mining creates a field of dots that can be connected – GREAT in round analogy to use.

Marc Thiessen. (June 10, 2013) Big Brother isn't watching you - Foreign and Defense

Policy - AEI. Retrieved October 04, 2013, from [www.aei.org/article/foreign-and-defense-policy/terrorism/big-brother-isnt-watching-you/](http://www.aei.org/article/foreign-and-defense-policy/terrorism/big-brother-isnt-watching-you/)

“Why does the NSA need to collect all that data? One former national security official explained it to me this way: **If you want to connect the dots and stop the next attack, you need to have a “field of dots.” That is what the NSA is collecting.** But it doesn’t dip into that field unless it comes up with a new “dot” — for example, a new terrorist phone number found on a cellphone captured in a raid. It will then plug that new “dot” into the “field of dots” to find out which dots are connected to the new number. **If you are not communicating with that terrorist, your dot is not touched. But the NSA needs to have the entire field of dots so it can unravel the network connected to that terrorist.**”

**Argument:** Data mining and other intelligence sources are the only successful way to fight terrorism in the status quo.

**Warrant:** We can’t interrogate and penetration of terrorist groups is exceedingly difficult.

Thiessen, Marc. “Big Brother isn’t watching you” *AEI*. 4 October 2013

<[www.aei.org/article/foreign-and-defense-policy/terrorism/big-brother-isnt-watching-you/](http://www.aei.org/article/foreign-and-defense-policy/terrorism/big-brother-isnt-watching-you/)>.

“If the critics don’t think the NSA should be collecting this information, perhaps they would like to explain just how they would have us stop new terrorist attacks. **Terrorists don’t have armies or navies we can track with satellites.** There are only three ways we can get information to prevent terrorist attacks: The first is interrogation — getting the terrorists to tell us their plans. But thanks to Barack Obama, we don’t do that anymore. The second is penetration, either by infiltrating agents into al-Qaeda or by recruiting operatives from within the enemy’s ranks. This is incredibly hard — and it got much harder, thanks to the leak exposing a double agent, recruited in London by British intelligence, who had penetrated al-Qaeda in the Arabian Peninsula and helped us break up a new underwear bomb plot in Yemen — forcing the extraction of the agent. **That leaves signals intelligence — monitoring the enemy’s phone calls and Internet communications — as our principal source of intelligence to stop terrorist plots.**

Now the same critics who demanded Obama end CIA interrogations are outraged that he is using signals intelligence to track the terrorists. **Well, without interrogations or signals intelligence, how exactly is he supposed to protect the country?"**

## **A/2 – Data Mining Necessary And Moral**

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**Answer:** Data mining a bad policy.

**Warrant:** It only catches stupid terrorists.

Geoffrey Ingersoll. (June 25, 2013) The NSA Prism Is Aimed At Terrorism's Idiots - Business Insider. Retrieved October 04, 2013, from [www.businessinsider.com/the-nsa-prism-is-aimed-at-terrorisms-idiots-2013-6](http://www.businessinsider.com/the-nsa-prism-is-aimed-at-terrorisms-idiots-2013-6)

“It doesn't really matter if the NSA gathers all the information from the big tech giants, because real terrorists, smart terrorists, the guys in management, they don't use those platforms. Only terrorism's idiots do. Leonid Bershidsky of Bloomberg writes: The infrastructure set up by the National Security Agency, however, may only be good for gathering information on the stupidest, lowest-ranking of terrorists. The Prism surveillance program focuses on access to the servers of America's largest Internet companies, which support such popular services as Skype, Gmail and iCloud. These are not the services that truly dangerous elements typically use.”

**Warrant:** Sophisticated terrorist groups use the “undernet”.

Geoffrey Ingersoll. (June 25, 2013) The NSA Prism Is Aimed At Terrorism's Idiots - Business Insider. Retrieved October 04, 2013, from [www.businessinsider.com/the-nsa-prism-is-aimed-at-terrorisms-idiots-2013-6](http://www.businessinsider.com/the-nsa-prism-is-aimed-at-terrorisms-idiots-2013-6)

“There are multiple platforms and methods to avoid the higher, more visible side of the Internet. Even Bin Laden was smart enough to use a courier and hand written notes to give orders. The real terrorist planners prefer to "remain in the undernet," writes Bershidsky. From Bloomberg: **In 2012, a French court found nuclear physicist Adlene Hicheur guilty of, among other things, conspiring to commit an act of terror**

for distributing and using software called Asrar al-Mujahideen, or Mujahideen Secrets. The program employed various cutting-edge encryption methods, including variable stealth ciphers and RSA 2,048-bit keys. A mathematician found out when he hacked into Google last year that they were only using 512 bit keys for their email communications. Likely they've upgraded, but the anecdote goes to show just how sophisticated terrorist planners can get.”

**Warrant:** The internet is almost impossible to effectively search.

Bershidsky, Leonid. “U.S. Surveillance Is Not Aimed at Terrorists” 23 June 2013. Web. 4 Oct 2013. <[www.bloomberg.com/news/2013-06-23/u-s-surveillance-is-not-aimed-at-terrorists.html](http://www.bloomberg.com/news/2013-06-23/u-s-surveillance-is-not-aimed-at-terrorists.html)>.

“The Netherlands’ security service, which couldn’t find recent data on the size of the Undernet, cited a 2003 study from the University of California at Berkeley as the “latest available scientific assessment.” The **study found that just 0.2 percent of the Internet could be searched.** The rest remained inscrutable and has probably grown since. In 2010, Google Inc. said it had indexed just 0.004 percent of the information on the Internet. **[Thus, terrorists switch to the Undernet because the .2% that will be searched are high traffic websites]** Websites aimed at attracting traffic do their best to get noticed, paying to tailor their content to the real or perceived requirements of search engines such as Google. **Terrorists have no such ambitions. They prefer to lurk in the dark recesses of the Undernet.** “People who radicalise under the influence of jihadist websites often go through a number of stages,” the Dutch report said. **“Their virtual activities increasingly shift to the invisible Web, their security awareness increases and their activities become more conspiratorial.”** Radicals who initially stand out on the “surface” Web quickly meet people, online or offline, who drag them deeper into the Web underground. “For many, finally finding the jihadist core forums feels like a warm bath after their virtual wanderings,” the report said. When information filters to the surface Web from the core forums, it’s often by accident. Organizations such as al-Qaeda

use the forums to distribute propaganda videos, which careless participants or their friends might post on social networks or YouTube.”

**Analysis:** Data mining is the scientific basis for much of the NSA’s prism program. Thus, both sides need to be able to effectively explain to lay judges how the process of data mining works, and whether it is useful at combating terrorism or not. The pro side can explain that the process does not look at the content of people’s messages, but merely treats them as data points, while the con team can argue that the process itself is not effective at combating terrorism from an analytical perspective.

## PRO – The Executive Branch Is Most Equipped to Address A Threat

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**Argument:** The Executive Branch is both constitutionally and best able to handle a threat to national security.

**Warrant:** Founding fathers recognized that the most effective action would be channeled through the executive.

Rossiter, Clinton. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*. New Brunswick, NJ: Transaction, 2011. Print.

“It was clearly recognized by the founding fathers that in the moments of peril the effective action of the government of the United States would be channeled through the person of the chief executive.”

**Warrant:** The increase of power to the Executive branch are rooted in the success of president’s in overcoming a crisis and the realization that other branches are less capable.

Linder, Doug. "Presidential Powers: An Introduction." University of Missouri-Kansas City Law School. University of Missouri-Kansas City Law School, 2013. Web. 6 Oct. 2013.  
<<http://law2.umkc.edu/faculty/projects/ftrials/conlaw/prespowers.html>>.

“Over the nation's long history, with only short interruptions, power has flowed increasingly to the Executive Branch. **The reasons for this are numerous, but include the successful exercise of power by ambitious presidents from Lincoln to the two Roosevelts, the growth of the administrative state in the 20th century, and the realization that Congress is ill-suited compared to the President to make timely responses to national security threats.**”

**Warrant:** The Presidential branch is equipped with inherent powers that allow it the authority to act and readily expand.

Marshall, William P. "Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters." Boston University Law Review. Boston University Law School, Apr. 2008. Web. 6 Oct. 2013.  
<<http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf>>.

**“Moreover, unlike the other branches, the Presidency has consistently been deemed to possess significant inherent powers. Thus, many of the President’s recognized powers, such as the authority to act in times of national emergency or the right to keep advice from subordinates confidential, are nowhere mentioned in the Constitution itself. This fluidity in definition, in turn, allows presidential power to readily expand when factors such as national crisis, military action, or other matters of expedience call for its exercise.”**

**Warrant:** In the age of information and power, the Presidential branch has a greater ability and expertise than the other branches.

Marshall, William P. "Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters." Boston University Law Review. Boston University Law School, Apr. 2008. Web. 6 Oct. 2013.  
<<http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf>>.

**“If, “[i]n the information age, information is power” then most of that power rests with the executive. Because of its vast resources, the executive branch has far greater access to information than do the co-branches of government. In addition, the executive branch has far greater ability and expertise to gather, examine, and cull that information than do the transitory legislative staffs in the Congress. Congress,**



**for example, does not have at its disposal the information gathering capabilities of the intelligence agencies or the technical expertise of the military in determining when there is a threat to national security.”**

**Warrant:** The Presidential branch is the quickest to act.

Marshall, William P. "Eleven Reasons Why Presidential Power Inevitably Expands and Why It Matters." Boston University Law Review. Boston University Law School, Apr. 2008. Web. 6 Oct. 2013.  
<[http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARS\\_HALL.pdf](http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARS_HALL.pdf)>.

“In the twenty first century, the weapons of war take only seconds to arrive. The increased speed of warfare necessarily vests power in the institution that is able to respond the fastest – the presidency, not the Congress.”

**Warrant:** Nothing should limit the ability of the president to take actions necessary to deter an attack.

Bazan, Elizabeth B. "Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information." Congressional Research Service. The Library of Congress, 5 Jan. 2006. Web. 6 Oct. 2013.  
<<http://www.fas.org/sgp/crs/intel/m010506.pdf>>.

“The Katz Court noted that its holding did not extend to cases involving national security, and Congress did not then attempt to regulate national security surveillance. Title III, as originally enacted, contained an exception. It stated that **‘Nothing contained in this chapter or in section 605 of the Communications Act . . . shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the**

**security of the United States, or to protect national security information against foreign intelligence activities.’ ”**

**Warrant:** Courts have accepted that the President has ability to conduct surveillance but does not limit the legislature from being able to set limits to that power.

Bazan, Elizabeth B. "Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information." Congressional Research Service. The Library of Congress, 5 Jan. 2006. Web. 6 Oct. 2013.  
<<http://www.fas.org/sgp/crs/intel/m010506.pdf>>.

“While courts have generally accepted that the President has the power to conduct domestic electronic surveillance within the United States inside the constraints of the Fourth Amendment, no court has held squarely that the Constitution disables the Congress from endeavoring to set limits on that power.”

**Analysis:** This argument takes into account our nation’s history and concludes that through the constitution, presidential precedent and pure efficiency, the executive office (and thus the NSA) is best equipped to address the threats to the nation.

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## A/2 – The Executive Branch Is Most Equipped to Address A Threat

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**Answer:** Sets a negative precedent for future presidents.

**Warrant:** Another president could exploit the lack of law.

Bloom, Robert. "The Constitutional Infirmary of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

“The lack of law controlling the NSA bothered Senator Mondale and led him to challenge Lt. General Allen with the following concern: **Given another day and another President, another perceived risk and someone breathing hot down the neck of the military leader then in charge of the NSA; demanding a review based on another watch list, another wide sweep to determine whether some of the domestic dissent is really foreign based, my concern is whether that pressure could be resisted on the basis of the law or not.**”

**Warrant:** Past precedent does not justify actions to contradict the constitution.

Bloom, Robert. "The Constitutional Infirmary of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

“The fact that multiple presidents have taken dubious constitutional positions on the use of force does not justify or validate such actions or change the limits of constitutional language and intent.”

**Warrant:** Success in a lottery is no argument for lotteries.

Rossiter, Clinton. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*. New Brunswick, NJ: Transaction, 2011. Print.

“Even though the United States has been fortunate enough to have a strong and able President in each of its major crises, still Bagehot was right when he wrote that “success in a lottery is no argument for lotteries.”

**Warrant:** President Lincoln’s assertion that a president can only act (in the same way that current presidents can) makes way for less democratic and patriotic presidential decisions in the future.

Rossiter, Clinton. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*. New Brunswick, NJ: Transaction, 2011. Print.

“If Lincoln could calmly assert: ‘I conceive that I may, in any emergency, do things on a military ground which cannot constitutionally be done by Congress,’ then some future president less democratic and less patriotic might assert the same thing.”

**Answer:** Executive branch secrecy prevents accountability.

**Warrant:** The NSA was created under the vague authority of the executive.

Bloom, Robert. "The Constitutional Infirmary of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." *William & Mary Bill of Rights Journal*. William & Mary Law School Scholarship

Repository, 2006. Web. 6 Oct. 2013.

<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

“No congressional statute created the NSA or restricted its permissible scope of activities. Instead, the agency was born from executive directives-directives vague in their delegation of authority and in their definition of the type of information permissible for the agency to collect.”

**Impact Warrant:** Constitutional guarantees cannot be upheld if surveillances are done at the discretion of the Executive branch.

Bloom, Robert. "The Constitutional Infirmary of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

“In holding that electronic surveillance for domestic security, even in light of national security imperatives, requires a warrant, the Court went on to say that ‘**[t]hese Fourth Amendment freedoms cannot properly be guaranteed if domestic security surveillances may be conducted solely within the discretion of the Executive Branch.**’ ”

**Analysis:** The founding father’s purposely set up three distinct governmental branches even when taking into account less efficiency and efficacy. They did so in order to promote checks and balances, transparency and accountability. By isolating the powers of emergency to one branch, all of the fears of the framers could eventually be actualized.

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## **PRO – NSA PRISM Program Protects National Security**

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**Argument:** PRISM is an effective anti-terrorism policy.

**General information:** What is PRISM?

Timothy B. Lee, the Washington Post. (June 12, 2013) Here's everything we know about PRISM to date. Retrieved October 04, 2013, from [www.washingtonpost.com/blogs/wonkblog/wp/2013/06/12/heres-everything-we-know-about-prism-to-date/](http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/12/heres-everything-we-know-about-prism-to-date/)

**“We know that PRISM is a system the NSA uses to gain access to the private communications of users of nine popular Internet services. We know that access is governed by Section 702 of the Foreign Intelligence Surveillance Act, which was enacted in 2008.** Director of National Intelligence James Clapper tacitly admitted PRISM's existence in a blog post last Thursday. A classified PowerPoint presentation leaked by Edward Snowden states that PRISM enables "collection directly from the servers" of Microsoft, Yahoo, Google, Facebook and other online companies."

**General Information:** Who does PRISM target?

Timothy B. Lee, the Washington Post. (June 12, 2013) Here's everything we know about PRISM to date. Retrieved October 04, 2013, from [www.washingtonpost.com/blogs/wonkblog/wp/2013/06/12/heres-everything-we-know-about-prism-to-date/](http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/12/heres-everything-we-know-about-prism-to-date/)

**“Defenders of the NSA's activities argue the Fourth Amendment doesn't apply because FISA orders only target non-Americans. Instead of showing probable cause to a judge, Section 702 of FISA allows senior Obama administration officials to "authorize" the "targeting of persons reasonably believed to be located outside the United States."** The surveillance may not "intentionally target" an American, but the NSA can

**obtain the private communications of Americans as part of a request that officially "targets" a foreigner."**

**Warrant:** Over 50 potential terrorist attacks have been thwarted by NSA surveillance programs.

Gerstein, Josh. "NSA: PRISM stopped NYSE attack" *Politico*. Web. 4 Oct 2013.  
<[www.politico.com/story/2013/06/nsa-leak-keith-alexander-92971.html](http://www.politico.com/story/2013/06/nsa-leak-keith-alexander-92971.html)>.

**"Recently leaked communication surveillance programs have helped thwart more than 50 "potential terrorist events" around the world since the Sept. 11 attacks, National Security Agency Director Keith Alexander said Tuesday. Alexander said at least 10 of the attacks were set to take place in the United States, suggesting that most of the terrorism disrupted by the program had been set to occur abroad."**

**Warrant:** 90% of these plots were stopped by PRISM.

Josh Gerstein. (June 18, 2013) NSA: PRISM stopped NYSE attack - Josh Gerstein - POLITICO.com. Retrieved October 04, 2013, from  
[www.politico.com/story/2013/06/nsa-leak-keith-alexander-92971.html](http://www.politico.com/story/2013/06/nsa-leak-keith-alexander-92971.html)

"Alexander said 90 percent of the potential terrorist incidents were disrupted by the Web traffic program known as PRISM. He was less clear about how many incidents the call-tracking effort had helped to avert."

**Warrant:** Specifically, the program contributed to stopping an attack on the New York Stock Exchange and an attack on the New York City subway system.

Josh Gerstein. (June 18, 2013) NSA: PRISM stopped NYSE attack - Josh Gerstein - POLITICO.com. Retrieved October 04, 2013, from  
[www.politico.com/story/2013/06/nsa-leak-keith-alexander-92971.html](http://www.politico.com/story/2013/06/nsa-leak-keith-alexander-92971.html)

“Deputy FBI Director Sean Joyce said the Web traffic program had contributed to arrests averting a plot to bomb the New York Stock Exchange that resulted in criminal charges in 2008. **Joyce also indicated that the PRISM program was essential to disrupting a plot to bomb the New York City subways in 2009. “Without the [Section] 702 tool, we would not have identified Najibullah Zazi,” Joyce said.”**

**Warrant:** Details of how PRISM stopped the NYSE attack.

John Shiffman and Mark Hosenball, Reuters. (June 18, 2013) “U.S. says surveillance thwarted NYSE attack, Somali funding” *Reuters*. October 04, 2013  
<[www.reuters.com/article/2013/06/18/us-usa-security-prevent-idUSBRE95H19Y20130618](http://www.reuters.com/article/2013/06/18/us-usa-security-prevent-idUSBRE95H19Y20130618)>.

“In the NYSE case, Deputy FBI Director Sean Joyce told Congress that as the NSA monitored a "known extremist in Yemen," the agency learned that the suspect was contacting Khalid Ouazzani, a Kansas City used-auto parts businessman. Joyce did not cite dates, but court records place the time between 2008 and 2010. With that information, Joyce said, the FBI obtained a more tightly targeted Foreign Intelligence Surveillance Act warrant and was "able to detect a nascent plot to bomb the New York Stock Exchange." Joyce added that Ouazzani "had been providing information and support to this plot" but provided no further details. Two law enforcement sources said that information led to the 2010 arrest of a New York accountant, Sabirhan Hasanoff, a dual U.S. and Australian citizen. Hasanoff pleaded guilty to providing material support to al-Qaeda in connection with the NYSE plot. Working with an unidentified American and two co-conspirators in Yemen, Hasanoff conducted surveillance of the stock exchange in 2008 as a potential attack site, prosecutors said.”



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**A/2 - NSA PRISM Program Protects National Security**

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**Answer:** Prism not necessary to stop terrorist attacks.

**Warrant:** Traditional law enforcement mechanisms most effective.

Peter Bergen, the New America Foundation. (June 18, 2013) Opinion: Did NSA snooping stop 'dozens' of terrorist attacks. Retrieved October 04, 2013, from [www.cnn.com/2013/06/17/opinion/bergen-nsa-spying/index.html](http://www.cnn.com/2013/06/17/opinion/bergen-nsa-spying/index.html)

“Indeed, a survey of court documents and media accounts of all the jihadist terrorist plots in the United States since 9/11 by the New America Foundation shows that traditional law enforcement methods have overwhelmingly played the most significant role in foiling terrorist attacks. This suggests that the NSA surveillance programs are wide-ranging fishing expeditions with little to show for them.”

**Warrant:** Normal law enforcement techniques stopped the New York Subway terrorist plot, not PRISM.

Nick Gillespie Jun. 10, 2013 2:39 Pm. (2013) Did NSA's PRISM Foil 2009 NY Subway Attack? Signs Point to No. - Hit & Run : Reason.com. Retrieved October 04, 2013, from [reason.com/blog/2013/06/10/did-nsas-prism-program-help-foil-2009-ny](http://reason.com/blog/2013/06/10/did-nsas-prism-program-help-foil-2009-ny)

**“Public — though not widely publicized — details of the Zazi plot cast into doubt the notion that a data mining program had much to do with the investigation. Zazi traveled to Pakistan in 2008 to train with al Qaeda. He was charged in 2009 with leading two other men in a plot to detonate suicide bombs in the New York subways. The path to his capture, according to the public records, began in April 2009, when British authorities arrested several suspected terrorists. According to a 2010 ruling from Britain’s**

Special Immigration Appeals Commission, one of the suspects' computers included email correspondence with an address in Pakistan....

Later that year, according to a transcript of Zazi's July, 2011 trial, Zazi emailed his al Qaeda handler in Pakistan for help with the recipe for his bombs. He sent his inquiry to the same email address: sana\_pakhtana@yahoo.com. An FBI agent, Eric Jurgenson, testified, "I was notified, I should say. My office was in receipt of several e-mail messages, e-mail communications." Those emails — from Zazi to the same sana\_pakhtana@yahoo.com — "led to the **investigation,**" he testified. **The details of terror investigations are not always laid out this clearly in public; but they appear to belie the notion, advanced by anonymous government officials Friday, that sweeping access to millions of email accounts played an important role in foiling the subway attack. Instead, this is the sort investigation made possible by ordinary warrants under the Foreign Intelligence Surveillance Act; authorities appear simply to have been monitoring the Pakistani email account that had been linked to terrorists earlier that year.**"

**Warrant:** PRISM did not stop the NSYE plot – the plotters stopped plotting when they realized that the NYSE was blocked off from vehicular traffic.

Brian Ross, Aaron Katersky, James Gordon Meek, Lee Ferran. (2013) NSA Claim of Thwarted NYSE Plot Contradicted by Court Documents - ABC News. Retrieved October 04, 2013, from [abcnews.go.com/Blotter/nsa-claim-thwarted-nyse-plot-contradicted-court-documents/story?id=19436557](http://abcnews.go.com/Blotter/nsa-claim-thwarted-nyse-plot-contradicted-court-documents/story?id=19436557)

"Court documents and FBI field reports reviewed by ABC News undercut and contradict the dramatic testimony from senior counter-terrorism officials that the National Security Agency's surveillance programs thwarted an attack by al Qaeda on the New York Stock Exchange. According to an FBI interview with an imprisoned al Qaeda figure involved in the plot, "there was no further operational planning of that target" after surveillance found the four streets around the exchange building "were blocked off from vehicular traffic."

**Warrant:** The plot did not even pose an immediate threat to the public.

Brian Ross, Aaron Katersky, James Gordon Meek, Lee Ferran. (2013) NSA Claim of Thwarted NYSE Plot Contradicted by Court Documents - ABC News. Retrieved October 04, 2013, from [abcnews.go.com/Blotter/nsa-claim-thwarted-nyse-plot-contradicted-court-documents/story?id=19436557](http://abcnews.go.com/Blotter/nsa-claim-thwarted-nyse-plot-contradicted-court-documents/story?id=19436557)

“Describing the charges against one of the plotters, Khalid Ouazzani of Kansas City, the then-United States attorney Beth Phillips, now a federal judge, said, "We have no evidence that Ouazzani engaged in any specific plot against the United States government." A spokesman, Don Ledford, today added, "We would still stand by that, that he posed no imminent threat to the public."

**Analysis:** The argument that the NSA surveillance programs stop terrorist attacks is going to be a critical point of contention in this month's topic. The topic asks the debaters to determine whether the programs are on net beneficial – and the way they benefit is supposedly to stop terrorist attacks. Thus, pro teams need to be able to both logically defend why this is true and show specific examples (with impacts) where terrorist attacks were foiled. Conversely, the con needs to be able to logically explain why the NSA programs are not useful and respond to the specific examples that pro gives.

## PRO – Reforms Solve

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**Argument:** By instituting reforms the NSA can continue to operate and stop terrorism without abridging rights.

**Warrant:** Reforms would increase FISA court regulation, while also implementing the checks and balances supplied by the public.

Savage, Charlie. "Senators Push to Preserve N.S.A. Phone Surveillance." *New York Times*. The New York Times Company, 26 Sept. 2013. Web. 4 Oct. 2013.  
<[http://www.nytimes.com/2013/09/27/us/politics/senators-push-to-preserve-nsa-phone-surveillance.html?\\_r=0](http://www.nytimes.com/2013/09/27/us/politics/senators-push-to-preserve-nsa-phone-surveillance.html?_r=0)>.

"The measure would require public reports of how often the N.S.A. had used the calling log database, she said. It would also reduce the number of years — currently five — that the domestic calling log data is kept before it is deleted. It would also require the N.S.A. to send lists of the phone numbers it searches, and its rationale for doing so, to the Foreign Intelligence Surveillance Court for review."

**Warrant:** Reforms will be built to restore American confidence in the system.

Lee, Timothy. "Here's the President's Four-point Plan for NSA Transparency." *The Washington Post*. The Washington Post, 9 Aug. 2013. Web. 4 Oct. 2013.  
<<http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/09/heres-the-presidents-four-point-plan-for-nsa-transparency/>>.

**"Section 215 gives the government the power to obtain business records that are "relevant" to a terrorism investigation.** The Patriot Act's author, Rep James Sensenbrenner (R-Wis.), has suggested that the government's legal arguments "make a mockery of the legal standard" of Section 215. "I believe **there are steps we can take to give the American people confidence that there are additional safeguards against**

abuse," the president said. He promised "greater oversight, greater transparency, and constraints on the use of this authority," but didn't elaborate on the exact changes he favored."

**Warrant:** Reforms will boost the power of the FISC by adding an "independent voice."

Lee, Timothy. "Here's the President's Four-point Plan for NSA Transparency." *The Washington Post*. The Washington Post, 9 Aug. 2013. Web. 4 Oct. 2013.  
<<http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/09/heres-the-presidents-four-point-plan-for-nsa-transparency/>>.

"The secretive FISC reviews government surveillance requests, and critics have characterized the court as a rubber stamp. The president said he favored adding an "independent voice" to the FISC review process to ensure that concerns about civil liberties were being well-represented in the court's deliberations."

**Warrant:** Reformists are already planning to create a panel to evaluate the NSA for effectiveness and accountability with the ultimate hope of maximizing both through reform.

Lee, Timothy. "Here's the President's Four-point Plan for NSA Transparency." *The Washington Post*. The Washington Post, 9 Aug. 2013. Web. 4 Oct. 2013.  
<<http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/09/heres-the-presidents-four-point-plan-for-nsa-transparency/>>.

"The president plans to name a "high-level group of outside experts" to study the government's surveillance programs and make recommendations on how to make them more effective and accountable. The panel will be asked to make recommendations for ways to "maintain the trust of the people, make sure there's no abuse, and ask how it impacts our foreign policy." He has asked for an interim report in 60 days and a final report by the end of the year.

**Warrant:** A system auditing data misuse and unusual data access would prevent abuse, including that of Bradley Manning and Edward Snowden.

Baker, Stewart. "Oversight Hearing on the Administration's Use of FISA Authorities." Skating on Stilts, 17 July 2013. Web. 4 Oct. 2013.  
<<http://www.skatingonstilts.com/files/pdf-of-baker-testimony-to-house-judiciary-committee-on-fisa-.pdf>>.

“The best way to do that, in my view, was sketched a decade ago by **the Markle Foundation Task Force on National Security**, which **called on the government to use new technologies to better monitor government employees who have access to sensitive information.**<sup>11</sup> **We need systems that audit for data misuse, that flag questionable searches, and that require employees to explain why they are seeking unusual data access. That’s far more likely to provide effective protection against misuse of private data than trying to keep cheap data out of government hands.** The federal government has in fact made progress in this area; that’s one reason that the minimization and targeting rules could be as detailed as they are. But it clearly needs to do better. **A proper system for auditing access to restricted data would not just improve privacy enforcement, it likely would have flagged both Bradley Manning and Edward Snowden for their unusual network browsing habits.**”

**Warrant:** Even if the NSA is slightly less efficient, reforms make the benefits outweigh the costs.

Schneier, Bruce. "The NSA-Reform Paradox: Stop Domestic Spying, Get More Security." *The Atlantic*. The Atlantic Monthly Group, 11 Sept. 2013. Web. 06 Oct. 2013. <<http://www.theatlantic.com/politics/archive/2013/09/the-nsa-reform-paradox-stop-domestic-spying-get-more-security/279537/>>.

“Any solution we devise will make the NSA less efficient at its eaves dropping job.  
”**That's a trade-off we should be willing to make, just as we accept reduced police**

**efficiency caused by requiring warrants for searches and warning suspects that they have the right to an attorney before answering police questions. We do this because we realize that a too-powerful police force is itself a danger, and we need to balance our need for public safety with our aversion of a police state.** The same reasoning needs to apply to the NSA. We want it to eavesdrop on our enemies, but it needs to do so in a way that doesn't trample on the constitutional rights of Americans, or fundamentally jeopardize their privacy or security. This means that sometimes the NSA won't get to eavesdrop, just as the protections we put in place to restrain police sometimes result in a criminal getting away. This is a trade-off we need to make willingly and openly, because overall we are safer that way."

**Analysis:** By implementing reforms, NSA spying becomes less private and privacy-invading, making it clearer that the benefits of domestic surveillance outweigh the harms.

**A/2 – Reforms Solve**

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**Answer:** Reforms can't keep up with technology.

**Warrant:** Reforms will only fall out of date, as intelligence-gathering always moves to new technologies.

Baker, Stewart. "Oversight Hearing on the Administration's Use of FISA Authorities." *Skating on Stilts*, 17 July 2013. Web. 4 Oct. 2013.  
<<http://www.skatingonstilts.com/files/pdf-of-baker-testimony-to-house-judiciary-committee-on-fisa-.pdf>>.

**"First, since American intelligence has always been at its best in using new technologies, intelligence law will always be falling out of date, and the more specific its requirements the sooner it will be outmoded."**

**Answer:** Reforms have proven to fail.

**Warrant:** The NSA quadrupled its oversight staff but its rate of infractions still increased.

Gellman, Barton. "NSA Broke Privacy Rules Thousands of times per Year, Audit Finds." *Washington Post*. The Washington Post, 21 Aug. 2013. Web. 04 Oct. 2013. <[http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-broke-privacy-rules-thousands-of-times-per-year-audit-finds/2013/08/15/3310e554-05ca-11e3-a07f-49ddc7417125_story.html)>.

**"Despite the quadrupling of the NSA's oversight staff after a series of significant violations in 2009, the rate of infractions increased throughout 2011 and early 2012. An NSA spokesman declined to disclose whether the trend has continued since last year."**



**Answer:** The NSA is above the law.

**Warrant:** The NSA Director has completely failed with a lack of contingency plan, but he still is retaining his job, demonstrating his immense powers.

Schneier, Bruce. "The NSA-Reform Paradox: Stop Domestic Spying, Get More Security." *The Atlantic*. The Atlantic Monthly Group, 11 Sept. 2013. Web. 06 Oct. 2013. <<http://www.theatlantic.com/politics/archive/2013/09/the-nsa-reform-paradox-stop-domestic-spying-get-more-security/279537/>>.

“Like J. Edgar Hoover, **NSA Director Keith Alexander has become so powerful as to be above the law**. He is able to get away with what he does because neither political party -- and nowhere near enough individual lawmakers -- dare cross him. Longtime NSA watcher James Bamford recently quoted a CIA official: “**We jokingly referred to him as Emperor Alexander -- with good cause, because whatever Keith wants, Keith gets.**” Possibly the best evidence for this position is how well Alexander has weathered the Snowden leaks. The NSA’s most intimate secrets are front-page headlines, week after week. Morale at the agency is in shambles. Revelation after revelation has demonstrated that Alexander has exceeded his authority, deceived Congress, and possibly broken the law. Tens of thousands of additional top-secret documents are still waiting to come. **Alexander has admitted that he still doesn’t know what Snowden took with him and wouldn’t have known about the leak at all had Snowden not gone public. He has no idea who else might have stolen secrets before Snowden, or who such insiders might have provided them to. Alexander had no contingency plans in place to deal with this sort of security breach, and even now -- four months after Snowden fled the country -- still has no coherent response to all this. For an organization that prides itself on secrecy and security, this is what failure looks like. It is a testament to Alexander’s power that he still has a job.**”

**Answer:** Impossible to reform.

**Warrant:** Congressmen can't reform a program that they do not know much about, one that is hidden in secrecy.

Jaycox, Mark. "Bills Introduced by Congress Fail to Fix Unconstitutional NSA Spying | Electronic Frontier Foundation." *Electronic Frontier Foundation*. Electronic Frontier Foundation, 15 July 2013. Web. 06 Oct. 2013.  
<<https://www EFF.org/deeplinks/2013/07/bills-fail-fix-unconstitutional-nsa-spying>>.

“Sadly, **all of them fail to fix the problem of unconstitutional domestic spying—not only because they ignore the PRISM program**, which uses Section 702 of the Foreign Intelligence Surveillance Act (FISA) and collects Americans' emails and phone calls—but **because the legislators simply don't have key information about how the government interprets and uses the statute**. *Congress must find out more about the programs before it can propose fixes*. That's why a coalition of over 100 civil liberties groups and over half a million people are pushing for a special congressional investigatory committee, more transparency, and more accountability.”

**Answer:** NSA regulations fail to directly limit their power.

**Warrant:** Ambiguous, undefined language allows the NSA to expand its power contrary to reform intentions.

Jaycox, Mark. "Bills Introduced by Congress Fail to Fix Unconstitutional NSA Spying | Electronic Frontier Foundation." *Electronic Frontier Foundation*. Electronic Frontier Foundation, 15 July 2013. Web. 06 Oct. 2013.  
<<https://www EFF.org/deeplinks/2013/07/bills-fail-fix-unconstitutional-nsa-spying>>.

“**Bills by Rep. Conyers and Sen. Sanders attempt to heighten the standard by using pre-9/11 language mandating "specific and articulable facts" about why the FBI**

**needs the records.** Rep. Conyers goes one step further than Sen. Sanders by forcing the FBI to include why the records are "material," or significantly relevant, to an investigation. By heightening the legal standard, the legislators intend for the FBI to show exactly why a mass database of calling records is relevant to an investigation. **But it's impossible to know if these fixes will stop the unconstitutional spying without knowing how the government defines key terms in the bills.** The bills by Sen. Leahy and Sens. Udall and Wyden do not touch this part of the law.”

**Answer:** Reforms fail to stop data collection.

**Warrant:** Our culture of volunteering information through cell phones, social media etc. makes it impossible to simply prevent any monitoring and create privacy.

Lennard, Natasha. "Effort to Reform NSA Is Important — and Doomed to Fail." *Salon*.

Salon Media Group, 26 Sept. 2013. Web. 06 Oct. 2013.

<[http://www.salon.com/2013/09/26/nsa\\_reform\\_bill\\_can\\_congress\\_save\\_us\\_from\\_spycraft/](http://www.salon.com/2013/09/26/nsa_reform_bill_can_congress_save_us_from_spycraft/)>.

“And here’s the catch: **Any reform proposals like those in the Intelligence Oversight and Surveillance Reform Act, even if inscribed into law, will be a frayed leash on the surveillance state’s steady creep forward. The surveillance state is, after all, not just the NSA and official government spy agencies. It is a nexus connecting Silicon Valley, Washington and the surveilled subjects who continually and voluntarily provide vast swaths of data about themselves through smartphones, social media and more.** Before the unveiling of the latest reform proposals, I wrote last week, “**How to push back against totalized surveillance is a question perhaps impossible for surveilled subjects to answer — it runs too deep, it’s how we live. We may well — and rightly — advocate for increased regulation, government transparency and the like. But, through a host of apparatuses we have become subjects ripe for surveillance, a state of affairs that cannot drastically change without rethinking how we communicate, move; the way we live.**”

**Answer:** Reforms will be weakened and will fail accordingly.

**Warrant:** Going through Congress, the reforms will be weakened and be cosmetic, doing little to prevent the problems of our surveillance state.

Lennard, Natasha. "Effort to Reform NSA Is Important — and Doomed to Fail." *Salon*.

Salon Media Group, 26 Sept. 2013. Web. 06 Oct. 2013.

<[http://www.salon.com/2013/09/26/nsa\\_reform\\_bill\\_can\\_congress\\_save\\_us\\_from\\_spycraft/](http://www.salon.com/2013/09/26/nsa_reform_bill_can_congress_save_us_from_spycraft/)>.

**“Realistically, though, the NSA reform proposals that go through will be weakened and at large cosmetic; at best a fragile floodgate against an ocean surging toward a totalized surveillance state. It’s how we live; it runs too deep.”**

**Analysis:** Reforms due to their ambiguous language, our progressing technology, and our culture of publicizing information about ourselves will fail to protect the American people.

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## **PRO – NSA Surveillance Constitutional**

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**Argument:** NSA Metadata collection does not violate the fourth amendment.

**Warrant:** The fourth amendment protects the contents of phone calls, but not the dialed phone numbers itself.

Yoo, John, Professor at the University of California Berkeley School of Law. (June 7, 2013) The NSA's Surveillance: No Clear Constitutional Violations | National Review Online. Retrieved October 04, 2013, from [www.nationalreview.com/corner/350498/nsas-surveillance-no-clear-constitutional-violations-john-yoo](http://www.nationalreview.com/corner/350498/nsas-surveillance-no-clear-constitutional-violations-john-yoo)

**“The program does not represent a violation of the Constitution because the Fourth Amendment does not protect dialed phone numbers, in contrast to the content of the communications, because individuals lose privacy over those numbers when they are given to the phone company. The Constitution protects the content of the communications, whether it be a phone call, e-mail, or old-fashioned letter. And Congress approved a change to the FISA statute to allow such collection, and a court of federal judges approved it. And as commander-in-chief, the president has the wartime authority to find and intercept enemy communications, known as signals intelligence. Analyzing such metadata — what is sometimes called data mining — is perhaps the most effective way to find terrorist cells in the U.S. and stop future attacks because the Obama administration has dropped our best methods for producing intelligence (the detention and interrogation of al-Qaeda leaders).”**

**Argument:** PRISM is at its core not a domestic but rather a foreign surveillance program.

Loren Thompson, Forbes. (June 7, 2013) Why NSA's PRISM Program Makes Sense - Forbes. Retrieved October 04, 2013, from

[www.forbes.com/sites/lorenthompson/2013/06/07/why-nsas-prism-program-makes-sense/](http://www.forbes.com/sites/lorenthompson/2013/06/07/why-nsas-prism-program-makes-sense/)

“President Obama’s firm defense of the National Security Agency’s “domestic” surveillance program on Friday should calm some of the more extravagant fears provoked by public disclosure of its existence. **I put the word “domestic” in quotes because the effort to monitor Internet and other communications traffic isn’t really about listening in on Americans, or even foreign nationals living here, but rather intercepting suspicious transmissions originating overseas that just happen to be passing through the United States.**”

**Warrant:** The structure of the Internet requires the US to listen domestically to catch foreign terrorists – because the Internet began in the United States, foreign communications pass through the United States.

Loren Thompson, Forbes. (June 7, 2013) Why NSA's PRISM Program Makes Sense - Forbes. Retrieved October 04, 2013, from [www.forbes.com/sites/lorenthompson/2013/06/07/why-nsas-prism-program-makes-sense/](http://www.forbes.com/sites/lorenthompson/2013/06/07/why-nsas-prism-program-makes-sense/)

“In order to grasp the logic of the NSA program, which is code-named PRISM, **you have to understand how the Internet evolved. It was a purely American innovation at its inception, with most of the infrastructure concentrated in a few places like Northern Virginia.** I live a few miles from where the Internet’s first big East Coast access point was located in the parking garage of an office building near the intersection of Virginia’s Routes 7 and 123, an area that some people refer to as Internet Alley. Because the Worldwide Web grew so haphazardly in its early days, it was common until recently for Internet traffic between two European countries to pass through my neighborhood. There were only a few major nodes in the system, and packet-switching sends messages through whatever pathway is available. The *Washington Post* story on PRISM today has a graphic illustrating my point about how bandwidth tends to be allocated globally. **Like a**

**modern version of ancient Rome's Appian Way, all digital roads lead to America.** It isn't hard to see why Director of National Intelligence James R. Clapper could say on Thursday that "information collected under this program is among the most important and valuable foreign intelligence information we collect." No kidding: PRISM generated an average of four items per day for the President's daily intelligence briefing in 2012. **The key point to recognize, though, is that this really is *foreign* intelligence. The architecture of the Internet enables NSA to collect it within U.S. borders, but there is no intention to spy on U.S. citizens.** A few elementary algorithms used in narrowing the analysis of traffic should be sufficient to assure that the privacy of American citizens is seldom compromised."

**Argument:** NSA foreign e-mail collection does not violate the constitution.

**Warrant:** The fourth amendment does not apply to foreign citizens.

Yoo, John, Professor at the University of California Berkeley School of Law. (June 7, 2013) The NSA's Surveillance: No Clear Constitutional Violations | National Review Online. Retrieved October 04, 2013, from [www.nationalreview.com/corner/350498/nsas-surveillance-no-clear-constitutional-violations-john-yoo](http://www.nationalreview.com/corner/350498/nsas-surveillance-no-clear-constitutional-violations-john-yoo)

"The revelation of broad e-mail surveillance is more troubling, but it is because we don't know the program's scope. **If the program only intercepts the content of e-mails for foreigners abroad, as is being reported, there is no constitutional violation. As the Supreme Court has made clear, the Fourth Amendment does not protect the communications of non-U.S. persons that take place abroad.** In fact, the Justices reached that conclusion because they observed that it would be impossible for the U.S. to fight a war against a foreign enemy if limited by the Fourth Amendment. Allowing the government to intercept foreign, potentially enemy signals intelligence abroad without a warrant recognizes the reality of war, as opposed to the precise targeting of communications that would apply if domestic law enforcement were."

## A/2 – NSA Surveillance Constitutional

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**Answer:** NSA programs unconstitutional.

**Warrant:** The fourth amendment clearly protects informational privacy.

Randy E. Barnett, Professor of Law at Georgetown University. (July 11, 2013) Randy Barnett: The NSA's Surveillance Is Unconstitutional - WSJ.com. Retrieved October 04, 2013, from [online.wsj.com/article/SB10001424127887323823004578593591276402574.html](http://online.wsj.com/article/SB10001424127887323823004578593591276402574.html)

“All of this dangerously violates the most fundamental principles of our republican form of government. The Fourth Amendment has two parts: First, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." Second, that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." **By banning unreasonable "seizures" of a person's "papers," the Fourth Amendment clearly protects what we today call "informational privacy."** Rather than seizing the private papers of individual citizens, the NSA and CFPB programs instead seize the records of the private communications companies with which citizens do business under contractual "terms of service." **These contracts do not authorize data-sharing with the government.** Indeed, these private companies have insisted that they be compelled by statute and warrant to produce their records so as not to be accused of breaching their contracts and willingly betraying their customers' trust.”

**Warrant:** FISA courts are approving metadata that can later be used to provide probable cause – this is the inverse of what is supposed to happen.



Randy E. Barnett, Professor of Law at Georgetown University. (July 11, 2013) Randy Barnett: The NSA's Surveillance Is Unconstitutional - WSJ.com. Retrieved October 04, 2013, from [online.wsj.com/article/SB10001424127887323823004578593591276402574.html](http://online.wsj.com/article/SB10001424127887323823004578593591276402574.html)

“True, judges have long been approving search warrants by relying on ex parte affidavits from law enforcement. With the NSA's surveillance program, the Foreign Intelligence Surveillance Court has apparently secretly approved the blanket seizure of data on every American so this "metadata" can later provide the probable cause for a particular search. Such indiscriminate data seizures are the epitome of "unreasonable," akin to the "general warrants" issued by the Crown to authorize searches of Colonial Americans.”

**Warrant:** NSA also violates the fifth amendment.

Randy E. Barnett, Professor of Law at Georgetown University. (July 11, 2013) Randy Barnett: The NSA's Surveillance Is Unconstitutional - WSJ.com. Retrieved October 04, 2013, from [online.wsj.com/article/SB10001424127887323823004578593591276402574.html](http://online.wsj.com/article/SB10001424127887323823004578593591276402574.html)

“Still worse, the way these programs have been approved violates the Fifth Amendment, which stipulates that no one may be deprived of property "without due process of law." Secret judicial proceedings adjudicating the rights of private parties, without any ability to participate or even read the legal opinions of the judges, is the antithesis of the due process of law.”

**Warrant:** Even FISC has found that the NSA has violated the constitution on at least one occasion.

Michael Helley, Business Insider. (June 10, 2013) NSA Spying Violated The Constitution - Business Insider. Retrieved October 04, 2013, from [www.businessinsider.com/nsa-spying-violated-the-constituion-2013-6](http://www.businessinsider.com/nsa-spying-violated-the-constituion-2013-6)

“Even before Glenn Greenwald published a top secret court order compelling Verizon to give the NSA information on all telephone calls in its systems and interviewed NSA whistleblower Edward Snowden, there were credible reports that the NSA was intercepting U.S. communications. The most significant of those occurred in July, when **the court that was established to "hear applications for and grant orders approving electronic surveillance,"** called the Foreign Intelligence Surveillance Court (FISC), **found that the NSA violated the Fourth Amendment's restriction against unreasonable searches and seizures "on at least one occasion."**

**Answer:** NSA program antithetical to our system of government.

**Warrant:** We can't hold our elected officials responsible.

Randy E. Barnett, Professor of Law at Georgetown University. (July 11, 2013) Randy Barnett: The NSA's Surveillance Is Unconstitutional - WSJ.com. Retrieved October 04, 2013, from [online.wsj.com/article/SB10001424127887323823004578593591276402574.html](http://online.wsj.com/article/SB10001424127887323823004578593591276402574.html)

“In a republican government based on popular sovereignty, the people are the principals or masters and those in government are merely their agents or servants. For the people to control their servants, however, they must know what their servants are doing. The secrecy of these programs makes it impossible to hold elected officials and appointed bureaucrats accountable. Relying solely on internal governmental checks violates the fundamental constitutional principle that the sovereign people must be the ultimate external judge of their servants' conduct in office. Yet such judgment and control is impossible without the information that such secret programs conceal. Had it not been for recent leaks, the American public would have no idea of the existence of these programs, and we still cannot be certain of their scope.”

**Analysis:** The constitutionality of the NSA surveillance programs will be a critical issue in the upcoming topic. Good con teams will put constitutionality in their framework and argue that since the government must follow the constitution, if they prove that the NSA programs violate the constitution, then the ballot should automatically be signed con. Thus, pro teams debating this resolution must be able to convince the judge that the programs are constitutional before debating the relative merits of the programs themselves.

# Champion Briefs

November 2013

Public Forum Brief



Con Arguments  
with Pro Responses

### CON – The NSA Sets a Negative Precedent

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**Argument:** Actions taken by the NSA set precedents for future departments and actors.

**Warrant:** Lack of law could lead to another day of infringement.

Bloom, Robert. "The Constitutional Infirmary of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

“The lack of law controlling the NSA bothered Senator Mondale and led him to challenge Lt. General Allen with the following concern: **Given another day and another President, another perceived risk and someone breathing hot down the neck of the military leader then in charge of the NSA; demanding a review based on another watch list, another wide sweep to determine whether some of the domestic dissent is really foreign based, my concern is whether that pressure could be resisted on the basis of the law or not.**”

**Warrant:** Executive officials will fall into bad tendencies of lacking transparency and accountability.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

“Without appropriate checks and oversight mechanisms, **executive officials will too easily slide into the bad tendencies that characterize authoritarian information states. They will increase secrecy, avoid accountability, cover up mistakes, and confuse their interest with the public interest.**”

**Warrant:** Without proper oversight, programs will only underperform and overstep their bounds while undermining the public’s trust in the government.

Heyman, David. "Finding the Enemy Within." Center for Strategic and International Studies. Center for Strategic and International Studies, post 2007. Web. 6 Oct. 2013. <[http://csis.org/images/stories/HomelandSecurity/071022\\_Chap4-FindingTheEnemyWithin.pdf](http://csis.org/images/stories/HomelandSecurity/071022_Chap4-FindingTheEnemyWithin.pdf)>.

“A significant issue highlighted by the recent revelation that the NSA was carrying on a program of warrantless wire-tapping of Americans is the lack of sufficient oversight over unknown or new programs. It’s one thing to have new covert missions, new collection programs, and new intelligence activities to improve situational awareness for homeland security, **but without proper oversight poorly designed programs may be left underperforming, agencies that overstep their bounds may go unchecked, and a skeptical public may lose confidence in their government.**”

**Argument:** Actions taken by the NSA set precedents for future generations.

**Impact Warrant:** Increased acquisition of intelligence will prevent a citizen’s ability to have privacy.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013. <[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

“The problem today is not that fear of surveillance will lead people to docile conformity, **but rather that even the most innocent and seemingly unimportant behaviors can increase knowledge about both ourselves and others.** Normal behavior does not merely acquiesce to the state’s power; it may actually amplify it, adding information to databases that makes inferences more powerful and effective. Our behavior may tell things about us that we may not even know about ourselves. In addition, knowledge about some people can generate knowledge about others who are not being directly watched. **Individuals can no longer protect themselves simply by preventing the government from watching them, for the government may no longer need to watch them to gain knowledge that can be used against them.**”

**Analysis:** This argument can serve as either an impact or an independent claim. Its assertion is very simple: If the NSA continues what it is doing unchecked and without confines, it will set a negative precedent for future actors and programs to do the same. This has the impact of less transparency, less efficacy and decreased public trust.

## A/2 – The NSA Sets a Negative Precedent

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**Answer:** The National Surveillance State set the precedent; the NSA is simply a byproduct.

**Warrant:** The definition of the National Surveillance State.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

“During the last part of the twentieth century, the United States began developing a new form of governance that features the collection, collation, and analysis of information about populations both in the United States and around the world. This new form of governance is the National Surveillance State.”

**Answer:** The NSA exists in times of emergency, not for times of peace

**Warrant:** The barriers to emergency dictatorship must be partially suspended if the government is to effectively overcome the threat to the country.

Rossiter, Clinton. Constitutional Dictatorship: Crisis Government in the Modern Democracies. New Brunswick, NJ: Transaction, 2011. Print.

“The Bill of Rights, federalism, and the separation of powers are the three main constitutional barriers to the easy establishment of emergency dictatorship in the United States. These are the principles of the American system which must be in whole or in part suspended if such government is to be inaugurated in a national emergency.”

**Warrant:** No democracy has gone through emergency without having some undesirable change.



Rossiter, Clinton. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*. New Brunswick, NJ: Transaction, 2011. Print.

**“No democracy ever went through a period of thoroughgoing constitutional dictatorship without some permanent and often unfavorable altercation in its governmental scheme, and in more than one instance an institution of constitutional dictatorship has been turned against the order it was established to defend.”**

**Analysis:** The answers you can give to the NSA setting up a negative precedent depend on the arguments being presented in your case. If you establish the National Surveillance State as a state of governance, then you can just state that the precedent was established by the NSS and that the NSA is one of many less than ideal byproducts. In comparison, if you establish that we are still in a time of emergency, the current state of the NSA is something that will only effect future emergencies and not normal times of peace.

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**CON– The NSA Allows for Government Overreach**

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**Argument:** Government overreach is violating laws and the constitution, weakening the legal structures that protect citizen's rights.

**Warrant:** The government is indiscriminately collecting massive amounts of information.

Greenwald, Glen. "NSA collecting phone records of millions of Verizon customers daily." *The Guardian*. June. 2013. Web. 1 October 2013.

<<http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>>.

**“The National Security Agency is currently collecting the telephone records of millions of US customers of Verizon**, one of America's largest telecoms providers, under a top secret court order issued in April. The order, a copy of which has been obtained by the Guardian, requires Verizon on an ‘ongoing, daily basis’ to give the NSA information on all telephone calls in its systems, both within the US and between the US and other countries. **The document shows for the first time that under the Obama administration the communication records of millions of US citizens are being collected indiscriminately and in bulk – regardless of whether they are suspected of any wrongdoing.** The secret Foreign Intelligence Surveillance Court (FISA) granted the order to the FBI on April 25, giving the government unlimited authority to obtain the data for a specified three-month period ending on July 19. **Under the terms of the blanket order, the numbers of both parties on a call are handed over, as is location data, call duration, unique identifiers, and the time and duration of all calls.** The contents of the conversation itself are not covered. The disclosure is likely to reignite longstanding debates in the US over the proper extent of the government's domestic spying powers. Under the Bush administration, officials in security agencies had disclosed to reporters the large-scale collection of call records data by the NSA, but this is the first time significant and top-secret documents have revealed the continuation of the practice on a

massive scale under President Obama. **The unlimited nature of the records being handed over to the NSA is extremely unusual.**

**Warrant:** The government has a pattern of using unconstitutional methods to do so.

Chappell, Bill. "Secret Court: NSA Surveillance Program Was Unconstitutional." *NPR*. Aug. 2013. Web. 1 October 2013. < <http://www.npr.org/blogs/thetwo-way/2013/08/21/214212847/nsa-culled-tens-of-thousands-of-u-s-emails-yearly-fisa-opinion-says>>.

**"A secret federal court found that the National Security Agency violated the civil rights of Americans when it collected thousands of emails and other digital messages between Americans, according to a 2011 opinion released Wednesday. The FISA court ruled parts of the program to be unconstitutional and ordered them to be revised.** The government made changes and the court signed off on the program in November of 2011. The release of a key opinion from October 2011 (pdf) and other documents was authorized today by Director of National Intelligence James Clapper, in response to requests from privacy advocates. In the opinion written by Judge John D. Bates of the Foreign Intelligence Surveillance Court, he also says the government misrepresented its surveillance efforts at least three times from 2008 to 2011. **Bates writes that the government first revealed its surveillance program to the court in 2011, but it had been collecting Internet data since at least 2008.** As The Washington Post reports U.S. intelligence officials who spoke about the release Wednesday "stressed that it was the NSA that brought the collection method to the court's attention as part of its regular reporting process." They noted that the plan had been to store large amounts of material temporarily, to allow the inspection of foreign communications. "But in practice, the NSA was unable to filter out the communications between Americans," The Post reports. The collection method in question was an "upstream" program, which drew data from fiber-optic networks that funnel a large portion of Internet and phone data. The opinion is not related to other surveillance programs that have garnered attention recently, such as PRISM or the bulk collection of telephone metadata. In the opinion

from late 2011, Bates notes that based on the government's initial plans and explanations, "the Court understood that the acquisition of Internet communications ... would be limited to discrete 'to/from' communications between or among individual account users and to 'about' communications." He states that the "revelation fundamentally alters" the understanding of the operations' scope. And in a footnote to this section of the opinion, Bates writes that this isn't the first time the federal government has misrepresented its actions: **"The Court is troubled that the government's revelations regarding NSA's acquisition of Internet transactions mark the third instance in less than three years in which the government has disclosed a substantial misrepresentation regarding the scope of a major collection program."**

**Warrant:** The NSA has collected email information from innocent Americans, violating protection from unreasonable search and seizure.

"NSA gathered thousands of Americans' emails, FISA court records show." *CBS news and the Associated Press*. 21 Aug. 2013. Web. 4 October 2013. <  
[http://www.cbsnews.com/8301-201\\_162-57599579/nsa-gathered-thousands-of-americans-emails-fisa-court-records-show/](http://www.cbsnews.com/8301-201_162-57599579/nsa-gathered-thousands-of-americans-emails-fisa-court-records-show/)>.

**"Amid growing public criticism, the National Security Agency declassified three secret U.S. court opinions Wednesday showing how it scooped up as many as 56,000 emails and other communications by Americans with no connection to terrorism annually over three years,** how it revealed the error to the court and changed how it gathered Internet communications. Director of National Intelligence James Clapper authorized the release Wednesday. The opinions show that when the NSA reported that to the court in 2011, the court ordered the NSA to find ways to limit what it collects and how long it keeps it. The NSA reported the problems it discovered in how it was gathering Internet communications to the court and shortly thereafter to Congress in the fall of 2011. **Three senior U.S. intelligence officials said Wednesday that the NSA realized that when it was gathering up bundled Internet communications from fiber optic cables, with the cooperation of telecommunications providers like AT&T, that**

**it was often collecting thousands of emails or other Internet transactions by Americans who had no connection to the intended terror target being tracked.** The officials briefed reporters on condition of anonymity because they were not authorized to describe the program publicly. **While the NSA is allowed to keep the metadata — the address or phone number and the duration, but not the content, of the communication — of Americans for up to five years, the court ruled that when it gathered up such large packets of information, they included actual emails between American citizens, it violated the Constitution's ban against unauthorized search and seizure.** In the opinion by the Foreign Intelligence Surveillance Court (FISA court) denouncing the practice, the judge wrote that the NSA had advised the court that "the volume and nature of the information it had been collecting is fundamentally different than what the court had been led to believe," and went on to say the court must consider "whether targeting and minimization procedures comport with the 4th Amendment."

**Warrant:** The NSA surveillance methods violate multiple amendments and the Patriot Act.

Dinan, Stephen. "Patriot Act author: NSA's data sweep exceeded law's intent; Joins legal fight against the snooping." Washington Times. Sept. 2013. Web. 1 October 2013. <<http://www.lexisnexis.com.ezproxy.neu.edu/hottopics/lnacademic/>>.

**"The chief author of the Patriot Act has filed court papers in support of a lawsuit seeking to stop the National Security Agency's bulk collection of records,** saying that the Obama administration is going far beyond what he intended when he wrote the law in the wake of the Sept. 11, 2001, attacks on New York and the Pentagon. Rep. F. James Sensenbrenner Jr., Wisconsin Republican and chief sponsor of the Patriot Act, filed a amicus curiae brief on Wednesday saying he was misled about the scope of snooping the government intended to use the Patriot Act for, and said he would not have backed reauthorizing key parts of the law if he had known about it. **"This misinterpretation of the law threatens our First, Second and Fourth Amendment rights," Mr. Sensenbrenner said in a statement after he filed his legal brief. "Congress never intended this.** I will rein in the abuse of both the Patriot Act and the U.S. Constitution

with the support of the American public." His brief raises serious separation of powers questions over how far the president can stretch a law beyond what Congress specifically intended. Mr. Sensenbrenner filed in support of a lawsuit by the American Civil Liberties Union, which is seeking to halt the NSA's records collection. The National Rifle Association has also filed an amicus brief challenging the Obama administration's actions."

**Warrant:** NSA surveillance decreased trust in the government.

Greenwald, Glen. "Major opinion shifts, in the US and Congress, on NSA surveillance and privacy." *The Guardian*. July. 2013. Web. 1 October 2013.

<<http://www.theguardian.com/commentisfree/2013/jul/29/poll-nsa-surveillance-privacy-pew>>.

"Numerous polls taken since our reporting on previously secret NSA activities first began have strongly suggested major public opinion shifts in how NSA surveillance and privacy are viewed. But a new comprehensive poll released over the weekend weekend by Pew Research provides the most compelling evidence yet of how stark the shift is. Among other things, **Pew finds that "a majority of Americans – 56% – say that federal courts fail to provide adequate limits on the telephone and internet data the government is collecting as part of its anti-terrorism efforts." And "an even larger percentage (70%) believes that the government uses this data for purposes other than investigating terrorism." Moreover, "63% think the government is also gathering information about the content of communications."** That demonstrates a decisive rejection of the US government's three primary defenses of its secret programs: there is adequate oversight; we're not listening to the content of communication; and the spying is only used to Keep You Safe™. But the most striking finding is this one: **"Overall, 47% say their greater concern about government anti-terrorism policies is that they have gone too far in restricting the average person's civil liberties, while 35% say they are more concerned that policies have not gone far enough to protect the country. This is the first time in Pew Research polling that more have expressed**

*concern over civil liberties than protection from terrorism since the question was first asked in 2004."* For anyone who spent the post-9/11 years defending core liberties against assaults relentlessly perpetrated in the name of terrorism, polling data like that is nothing short of shocking. This Pew visual underscores what a radical shift has occurred from these recent NSA disclosures:"

**Warrant** – NSA mass surveillance creates the possibility of a slippery slope.

Dinan, Stephen. "Patriot Act author: NSA's data sweep exceeded law's intent; Joins legal fight against the snooping." Washington Times. Sept. 2013. Web. 1 October 2013. <<http://www.lexisnexis.com.ezproxy.neu.edu/hottopics/lnacademic/>>.

**"Mr. Sensenbrenner said Section 215 of the act, which granted the government the ability to collect records from companies, was meant to apply only when the government thought the records were important to a specific investigation. The NSA has interpreted the section to mean it can demand and store years' worth of data about phone calls, and later go back and look at the relevant data as part of investigations.** In its own court filing last month, the government said a secret court has already upheld the program as justified by Section 215. And the Justice Department argued that the law is quite broad in what it allows. 'Courts in each of these contexts have categorically authorized the production of entire repositories of records, even when any particular record is unlikely to bear directly on the matter being investigated, where searching a large volume of information is the only feasible means of locating much smaller amounts of critical information within the data that directly bears on the matter under investigation,' the administration said. **Mr. Sensenbrenner countered that that amounts to a 'dragnet' of Americans' records and said it had 'frightening implications.'** In his lawsuit, he said Congress 'required that the records sought be relevant to 'an authorized investigation,' rather than relevant to general or omnibus efforts to combat terrorism. Congress thus required intelligence agencies to establish a specific link between the records sought and a specific, individual investigation.' **Mr. Sensenbrenner said the government's interpretation that every phone call is**

relevant to terrorism investigations could lead to authorities saying every gun sale is also relevant - and to begin building a database of gun owners.”

**Warrant:** Repeated violations of the Constitution weakens protections for rights.

Napolitano, Andrew. “The NSA Scandal Violates the Lessons of Our History and Our Constitution.” *Reason*. 13 June. 2013. Web. 1 October 2013. <  
<http://reason.com/archives/2013/06/13/the-nsa-scandal-violates-the-lessons-of>>.

**“In 30 years, from 1979 to 2009, the legal standard for searching and seizing private communications -- the bar that the Constitution requires the government to meet -- was lowered by Congress from probable cause of crime to probable cause of being an agent of a foreign power to probable cause of being a foreign person to probable cause of communicating with a foreign person. Congress made all these changes, notwithstanding the oath that each member of Congress took to uphold the Constitution.** It is obvious that the present standard, probable cause of communicating with a foreign person, bears no rational or lawful resemblance to the constitutionally mandated standard: probable cause of crime. **Now we know that the feds have seized the telephone records of more than 100 million Americans and the email and texting records of nearly everyone in the U.S. for a few years. They have obtained this under the laws that permit them to do so. These laws -- just like the ones that let British soldiers write their own search warrants -- were validly enacted, but they are profoundly unconstitutional.** They are unconstitutional because they purport to change the clear and direct language in the Constitution, and Congress is not authorized to make those changes. **These laws undermine the reasons the Constitution was written, one of which was to guarantee the freedom to exercise one's natural rights.** These laws directly contradict the core American value that our rights come from our humanity and may not be legislated away -- not by a vote of Congress, not by the consensus of our neighbors, not even by agreement of all Americans but one.”



**Analysis:** The argument here is simply that when you continually break the law, the power and respect for the law, even by the government, weakens. At the point where the NSA continually violates the Constitution, the ability for the government to *keep* doing that becomes easier because it becomes the norm, and rights violations can happen perpetually.

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## A/2 – The NSA Allows for Government Overreach

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**Answer:** NSA Policies are fully within the government's power.

**Warrant:** The NSA collection of metadata is constitutional and in line with Patriot Act.

Gallagher, Ryan. "How the Surveillance Court Ruled the NSA's Domestic Snooping Was Legal." *Slate*. 17 Sept. 2013. Web. 4 October 2013.

<[http://www.slate.com/blogs/future\\_tense/2013/09/17/claire\\_eagan\\_fisc\\_how\\_surveillance\\_court\\_ruled\\_the\\_nsa\\_s\\_domestic\\_snooping.html](http://www.slate.com/blogs/future_tense/2013/09/17/claire_eagan_fisc_how_surveillance_court_ruled_the_nsa_s_domestic_snooping.html)>.

"The secret court that oversees NSA surveillance has declassified documents that reveal for the first time the legal justification for the spy agency's daily collection of virtually all Americans' phone records. **On Tuesday, a previously top-secret opinion and order signed off by Foreign Intelligence Surveillance Court Judge Claire Eagan was published . The opinion, dated Aug. 29, shows how the court decided to deem the NSA's mass collection of domestic phone records constitutional and in line with section 215 of the Patriot Act,** which allows the government to secretly grab so-called "business records." **The NSA's operation of a vast database storing metadata on millions of calls** made by Americans daily was first revealed by the Guardian in June, based on documents leaked by former NSA contractor Edward Snowden. The release of the court opinion and order on the phone records program comes after a declassification review of the secret legal files was conducted, primarily due to the huge backlash prompted by Snowden's leaks. The opinion shows that the court is relying on a Supreme Court case from 1979 to conclude that the bulk collection of phone records is not a violation of the Fourth Amendment, which protects against unreasonable searches and seizures. **In Smith v. Maryland , at issue was the warrantless monitoring of a robbery suspect's phone calls. The Supreme Court judges in Smith found that the monitoring was permissible because "a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties" and that they**

doubted “people in general entertain any actual expectation of privacy in the numbers they dial.” Grounded in the same logic, the newly released FISC opinion states: In sum, because the application at issue here concerns only the production of call detail records or “telephone metadata” belonging to a telephone company, and not the contents of communications, *Smith v. Maryland* compels the conclusion that there is no Fourth Amendment impediment to the collection. Furthermore, for the reasons stated in [REDACTED] and discussed above, **this Court finds that that the volume of records being acquired does not alter this conclusion.**”

**Warrant:** FISA courts maintain oversight over the NSA.

“Foreign Intelligence Surveillance Act.” *Federal Judicial Center*.

<[http://www.fjc.gov/history/home.nsf/page/courts\\_special\\_fisc.html](http://www.fjc.gov/history/home.nsf/page/courts_special_fisc.html)>.

“Congress in 1978 established the Foreign Intelligence Surveillance Court as a special court and authorized the Chief Justice of the United States to designate seven federal district court judges to review applications for warrants related to national security investigations. Judges serve for staggered, non-renewable terms of no more than seven years, and until 2001 were drawn from different judicial circuits. **The provisions for the court were part of the Foreign Intelligence Surveillance Act (92 Stat. 1783), which required the government, before it commenced certain kinds of intelligence gathering operations within the United States, to obtain a judicial warrant similar to that required in criminal investigations.** The legislation was a response to a report of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the “Church Committee”), which detailed allegations of executive branch abuses of its authority to conduct domestic electronic surveillance in the interest of national security. Congress also was responding to the Supreme Court’s suggestion in a 1972 case that under the Fourth Amendment some kind of judicial warrant might be required to conduct national security related investigations. **Warrant applications under the Foreign Intelligence Surveillance Act are drafted by attorneys in the General Counsel’s Office at the National Security Agency at the request of an**

officer of one of the federal intelligence agencies. Each application must contain the Attorney General's certification that the target of the proposed surveillance is either a "foreign power" or "the agent of a foreign power" and, in the case of a U.S. citizen or resident alien, that the target may be involved in the commission of a crime."

**Warrant:** The metadata that the NSA collects does NOT include content.

Nakashima, Ellen. "NSA chief defends collecting Americans' data." *Washington Post*. 25 Sept. 2013. Web. 4 October 2013. <[http://articles.washingtonpost.com/2013-09-25/world/42376461\\_1\\_u-s-phone-companies-boston-marathon-database](http://articles.washingtonpost.com/2013-09-25/world/42376461_1_u-s-phone-companies-boston-marathon-database)>.

" 'We did use [Section] 215,' he said, referring to the USA Patriot Act provision that the government has claimed a federal court has agreed gives it the authority to collect data on practically all calls made in the United States. 'We used it to support the FBI in their investigation.' Similarly, he said **the records database — which contains the numbers, times and duration of calls but not their content — was useful in determining that there were no threats against targets in the United States in connection with the suspected targeting of U.S. embassies** over the summer. In nearly hour-long remarks and the interview afterward, **Alexander offered his most impassioned defense of a program that is under fire and that he fears could be curtailed or abolished. He said that the NSA's database, which former officials say contains billions of phone number records, is the only way the government can quickly 'connect the dots' between suspect foreign numbers and those in the United States.**"

**Warrant:** Majority of the country supports the NSA.

Bump, Philip. "The Majority of Americans Still Don't Care About the NSA Spying on Them." 10 June 2013. Web. 6 October 2013. <<http://www.theatlanticwire.com/politics/2013/06/nsa-spying-poll-pew/66093/>>.

“A bit of good news for the 265 sitting members of Congress who voted to extend the legislation that the NSA claims as its mandate to collect phone data: **the majority of Americans don't care. Pew Research today released a poll suggesting that 56 percent of the country thinks doing just that is just fine.** The firm, which has clearly been paying closer attention to the history of the NSA than many Americans, asked similar questions about the balance between privacy and terror investigations in 2002, 2003, 2006, and 2010. That history provides some insight into how attitudes toward the subject have changed. Or: haven't. **Asked if it was acceptable for the NSA to intrude on privacy in service to terror investigations, people in 2006, 2010, and today all expressed about two-to-one support for doing so.** On the specific question of warrantless wiretapping — the NSA's apparent ability to catalog data about phone calls — the numbers have shifted just as slightly. For civil libertarians, the trend is actually *worse*. In 2006, 47 percent of Americans opposed the idea. Now, 41 percent do.”

**Analysis:** There's plenty of oversight of the NSA and the NSA falls in line with the constitution and the law, which means that the problems described in the argument don't happen because side constraints prevent the government from exercising too much power.

### CON – NSA Costs Billions

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**Argument:** NSA surveillance costs taxpayers billions of dollars.

**Warrant:** About 14% of intelligence budget goes towards NSA.

Sahadi, Jeanne. "What the NSA Costs Taxpayers." *CNNMoney*. Cable News Network, 07 June 2013. Web. 04 Oct. 2013.  
<<http://money.cnn.com/2013/06/07/news/economy/nsa-surveillance-cost/index.html>>.

**“As a result, it's impossible to say exactly how much money the NSA is given to conduct its surveillance efforts -- which Americans learned this week has recently included collecting phone call data and monitoring online activities. That's because the NSA, a Defense Department agency created in 1952, falls under the category of a ‘black’ program in the federal budget, a term applied to classified efforts. The NSA is one of at least 15 intelligence agencies, and combined the total U.S. intelligence budget in 2012 was \$75 billion, said Steve Aftergood, director of the government secrecy program at the Federation of American Scientists, a nonpartisan think tank that analyzes national and international security issues. The intelligence budget includes funding for both classified and unclassified activities. Funding for classified programs has tracked the upward trend in defense spending over the past decade, according to an analysis of fiscal year 2012 Defense Department budget request by Todd Harrison of the Center for Strategic and Budgetary Assessments. Aftergood estimates about 14% of the country's total intelligence budget -- or about \$10 billion -- goes to the NSA.”**

**Warrant:** We haven't seen any returns on NSA surveillance.

Masnick, Mike. "Cost-Benefit Analysis Of NSA Surveillance Says It's Simply Not Worth It." *Techdirt*. N.p., 7 Aug. 2013. Web. 04 Oct. 2013.

<<http://www.techdirt.com/articles/20130807/01194124092/cost-benefit-analysis-nsa-surveillance-says-its-simply-not-worth-it.shtml>>.

“And... for what benefit? **We've already seen multiple Senators point out that the NSA and its supporters have yet to provide a single shred of evidence that the bulk collection of metadata (the Patriot Act Section 215 program) was necessary in stopping *any* terrorist activity. So the "benefit" on the other side of the equation appears to be *absolutely nothing*. How could it possibly make sense to have a program which costs billions to our economy -- and directly to one of the few rapidly growing and expanding sectors of the economy, which also has tremendous productivity benefits for nearly all other parts of the economy -- for no benefit at all?**”

**Warrant:** NSA costs over \$50 billion – a budget never seen by the public.

"US Spying 'black Budget' May Top \$52 Billion: Washington Post." *CNBC.com*. N.p., 29 Aug. 2013. Web. 04 Oct. 2013. <<http://www.cnbc.com/id/100997589>>.

“**U.S. national security agencies have built a multi-billion dollar web of intelligence-gathering tools since the Sept. 11, 2001 terror attacks that exists far beyond public scrutiny, according to a report from the Washington Post. Using documents obtained from fugitive contractor Edward Snowden, the Post report says American spy agencies are operating a \$52.6 billion ‘black budget’ that has never been seen by the public.**”

**Warrant:** NSA is a waste of money- no terrorists in the US.

Mueller, John. "3 Questions About NSA Surveillance." *The Chronicle of Higher Education*. N.p., 2011. Web. 04 Oct. 2013.

<<http://chronicle.com/blogs/conversation/2013/06/13/3-questions-about-nsa-surveillance/>>.

**“As it turned out, the number of Al Qaeda operatives actually in the United States registered at zero or nearly so, and the threat of terrorism in the country proved to be far more limited than initially feared. Accordingly, there might logically have been some judicious cutbacks in the funds devoted to the expensive quest to find terrorists who mostly didn’t exist—a process some in the FBI call “ghost chasing.” However, the reaction has continually been to expand the enterprise, searching for the needle by adding more and more hay. Far overdue are extensive openly published studies that rationally evaluate homeland-security expenditures.”**

**Analysis:** These arguments would work very well paired with almost every other con argument in the brief. If a program costs billions of dollars originally and also causes all the other harms (like hurting the tech industry, violating privacy), why would that outweigh the benefits?



**A/2 – NSA Costs Billions**

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**Answer:** The NSA is important to stopping attacks.

**Warrant:** NSA surveillance has helped thwart terrorist plans.

Schmitt, Eric. "Analysts: Leak of Terror Plot Hurt NSA Most." *The Star Tribune*. N.p., 29 Sept. 2013. Web. 04 Oct. 2013. <<http://m.startribune.com/news/?id=225742931>>.

“Since news reports in early August revealed that the United States intercepted messages between Ayman al-Zawahri, who succeeded Osama bin Laden as the head of Al-Qaida, and Nasser al-Wuhayshi, the head of the Yemen-based Al-Qaida in the Arabian Peninsula, discussing an imminent terrorist attack, analysts have detected a sharp drop in the terrorists’ use of a major communications channel that authorities were monitoring. Since August, senior U.S. officials have been scrambling to find new ways to tap into the electronic messages and conversations of Al-Qaida’s leaders and operatives. The communication intercepts between al-Zawahri and Wuhayshi revealed what U.S. intelligence officials and lawmakers have described as one of the most serious plots against American and Western interests since the attacks of Sept. 11, 2001. It prompted the closure of 19 U.S. embassies and consulates for a week, when the authorities ultimately concluded that the plot focused on the embassy in Yemen.”

**Analysis:** With this argument you just need to do a simple cost-benefit analysis. It could cost us billions of dollars to run the program, but how much assistance has it provided on the war on terror? (Pull ANY offense from the PRO arguments). If CON says something about how this is a ridiculous amount of money, you can make the argument that there’s not a clear bright line as to how much they need to save the world from terrorism. Then explain why the AFF world with guaranteed results but an extensive program is preferable.

## **CON – The NSA Undermines the Social Contract**

**Argument:** The basis of the social contract is the consent and trust of the governed. If the consent is undermined, the social contract is as well.

**Warrant:** Government legitimacy is solely depend on the sovereignty of the people.

"Popular Sovereignty." Saylor.Org. Encyclopedia of the American Constitution, n.d. Web. 6 Oct. 2013. <<http://www.saylor.org/site/wp-content/uploads/2011/03/Popular-sovereignty.pdf>>.

**“Thenceforth, American revolutionaries generally agreed and were committed to the principle that governments were legitimate only if they rested on popular sovereignty – that is, the sovereignty of the people. This idea— often linked with the notion of the consent of the governed— was not invented by the American revolutionaries. Rather, the consent of the governed and the idea of the people as a sovereign had clear 17th and 18th century intellectual roots in English history.”**

**Warrant:** Popular sovereignty is derived from the social contract.

Knutsen, John F. "1. Popular Sovereignty." BasicLaw.Net. Fremskrittspartiets Utredningsinstitut, 2004. Web. 06 Oct. 2013. <[http://www.basiclaw.net/Principles/Popular sovereignty.htm](http://www.basiclaw.net/Principles/Popular%20sovereignty.htm)>.

**“The origin of popular sovereignty, on the other hand, goes most directly back to what is called the social contract school of the mid 1600s to the mid 1700s. Popular sovereignty is the notion that no law or rule is legitimate unless it rests directly or indirectly on the consent of the individuals concerned.”**

**Warrant:** To realize popular sovereignty, institutional systems must be properly designed.

Fan, Hsin-Hua. "On Popular Sovereignty." Digital Repository at the University of Maryland. University of Maryland, College Park Graduate School, 2009. Web. 6 Oct. 2013.

<[http://drum.lib.umd.edu/bitstream/1903/9255/1/Fan\\_umd\\_0117E\\_10129.pdf](http://drum.lib.umd.edu/bitstream/1903/9255/1/Fan_umd_0117E_10129.pdf)>.

**“To realize popular sovereignty well, it requires an environment supporting the idea of popular sovereignty and enabling the People to participate substantially in order to rule. This should be done through a good design of institutional systems.”**

**Warrant:** The framers of the constitution designed the government to be accountable to each other and the people.

"The Social Contract and Constitutional Republics." Constitution Society. Constitution Society, 2007. Web. 6 Oct. 2013. <<http://www.constitution.org/soc1cont.htm>>.

**“The framers of the U.S. Constitution addressed the problem of avoiding unbalanced or excessive concentrations of power in government by adopting a constitution in which legislative, executive, and judicial powers are largely divided among separate branches, with each having some power to check the abuses of the others.** Legislative powers were further divided between two legislative bodies. Some powers were delegated to the central national government, which others were reserved to the component states or the people.”

**Impact Warrant:** The NSA gives the perception of unchecked power that undermines public trust.

Heyman, David. "Finding the Enemy Within." Center for Strategic and International Studies. Center for Strategic and International Studies, post 2007. Web. 6 Oct.

2013. <[http://csis.org/images/stories/HomelandSecurity/071022\\_Chap4-FindingTheEnemyWithin.pdf](http://csis.org/images/stories/HomelandSecurity/071022_Chap4-FindingTheEnemyWithin.pdf)>.

**“Unlimited collection would not only be an invasion of privacy, it would be counter to the common expectation of Americans to be free to be left alone. Even the perception of unchecked intelligence diminishes greatly the public’s trust in government. Further, when the public learns through news leaks of unwarranted, potentially unlawful collection, it leaves many asking what else is going on?”**

**Impact Warrant:** Both inherent and perceptual harms to the fourth amendment have impacts on citizens and their belief in the political system

Bazan, Elizabeth B. "Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information." Congressional Research Service. The Library of Congress, 5 Jan. 2006. Web. 6 Oct. 2013. <<http://www.fas.org/sgp/crs/intel/m010506.pdf>>.

**“The Senate Judiciary Committee also focused on the potentially chilling effect of warrantless electronic surveillance upon the exercise of First Amendment rights: Also formidable — although incalculable — is the “chilling effect” which warrantless electronic surveillance may have on the constitutional rights of those who were not targets of the surveillance, but who perceived themselves, whether reasonably or unreasonably, as potential targets. Our Bill of Rights is concerned not only with direct infringements on constitutional rights, but also with government activities which effectively inhibit the exercise of these rights. The exercise of political freedom depends in large measure on citizens’ understanding that they will be able to be publicly active and dissent from official policy, within lawful limits, without having to sacrifice the expectation of privacy that they rightfully hold. Arbitrary or uncontrolled use of warrantless electronic surveillance can violate that understanding and impair that public confidence so necessary to an uninhibited political life.”**

**Analysis:** Through the need for popular sovereignty, the NSA undermines the social contract between the government and the people. It does so by unevenly distributing the power between government institutions in ways that hinder transparency and accountability. In addition, revelations of these unchecked actions undermine citizen's trust in the government, which has an additional effect of lacking trust.

## A/2 – The NSA Undermines the Social Contract

**Answer:** As part of the social contract, the people must give up some rights in order to be provided security.

**Warrant:** As a society, to gain security, individuals must give up some absolute freedoms.

Cerf, Vinton G. "Freedom and the Social Contract." CACM. Communications of the ACM, 2013. Web. 06 Oct. 2013.  
<<http://cacm.acm.org/magazines/2013/9/167137-freedom-and-the-social-contract/fulltext>>.

**“One is that in a society, to achieve a degree of safety and stability, we as individuals give up some absolute freedom of action to what Rousseau called the sovereign will of the people.”**

**Warrant:** The alternative society with unlimited power would lead to unlimited potential harms; we voluntarily give that power up to be protected.

Cerf, Vinton G. "Freedom and the Social Contract." CACM. Communications of the ACM, 2013. Web. 06 Oct. 2013.  
<<http://cacm.acm.org/magazines/2013/9/167137-freedom-and-the-social-contract/fulltext>>.

**“I think it may be fair to say that most of us would not want to live in a society that had no limits to individual behavior. In such a society, there would be no limit to the potential harm an individual could visit upon others. In exchange for some measure of stability and safety, we voluntarily give up absolute freedom in exchange for the rule of law.”**

**Warrant:** In the status quo, there are increases in threats to national security and abuse.

Cerf, Vinton G. "Freedom and the Social Contract." CACM. Communications of the ACM, 2013. Web. 06 Oct. 2013.  
<<http://cacm.acm.org/magazines/2013/9/167137-freedom-and-the-social-contract/fulltext>>.

**“In today's world, threats to our safety and threats to national security come from many directions and not all or even many of them originate from state actors. If I can use the term "cyber-safety" to suggest safety while making use of the content and tools of the Internet, World Wide Web, and computing devices in general, it seems fair to say the expansion of these services and systems has been accompanied by a growth in their abuse. Moreover, it has been frequently observed that there is an asymmetry in the degree of abuse and harm that individuals can perpetrate on citizens, and on the varied infrastructure of our society. Vast harm and damage may be inflicted with only modest investment in resources. Whether we speak of damage and harm using computer-based tools or damage from lethal, homemade explosives, the asymmetry is apparent. While there remain serious potential threats to the well-being of citizens from entities we call nation- states, there are similarly serious potential threats originating with individuals and small groups.”**

**Warrant:** In the status quo, the response to these increases in threats would be intelligence gathering.

Cerf, Vinton G. "Freedom and the Social Contract." CACM. Communications of the ACM, 2013. Web. 06 Oct. 2013.  
<<http://cacm.acm.org/magazines/2013/9/167137-freedom-and-the-social-contract/fulltext>>.

**“The societal response to this is to provide for law enforcement and intelligence gathering (domestic and non-domestic) in an attempt to detect and thwart harmful plans from becoming harmful reality.”**

**Warrant:** Although the extent of the security can be overextended, a certain degree of intelligence gathering is necessary.

Cerf, Vinton G. "Freedom and the Social Contract." CACM. Communications of the ACM, 2013. Web. 06 Oct. 2013.  
<<http://cacm.acm.org/magazines/2013/9/167137-freedom-and-the-social-contract/fulltext>>.

**“It has been said that "security" is not found in apprehending a guilty party but in preventing the harm from occurring. While this notion can surely be overextended, it can also be understood to justify a certain degree of intelligence gathering in the service of safety and security.”**

**Analysis:** The best way to answer this argument is to reexamine how the social contract exists in the status quo. Keep in mind the increased threats of terrorism, especially from intelligence and the Internet; the only way the social contract can be upheld is through prioritizing security over rights. It is because the alternative society structure of unlimited individual power does not work in modern society that it is necessary to suspend some of these rights to promote safety.



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**CON – NSA Surveillance is Islamophobic**

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**Argument:** NSA domestic surveillance is blatantly Islamophobic.

**Warrant:** NSA can/does target Muslims or Arabs at a higher propensity.

Phelps, Paulina. "Arab and Muslim Communities React to NSA Surveillance Leak." *Seattle Globalist*. N.p., 25 June 2013. Web. 04 Oct. 2013.  
<<http://www.seattleglobalist.com/2013/06/25/arab-and-muslim-nsa-surveillance-leak/14225>>.

**“The reality is, in our society there is so much institutional racism and subconscious stereotyping that people naturally are going to just pay more attention to someone with an Arab name,”** Abdallah said. ‘I’ve seen the people they’ve deported that they’ve seen as ‘terrorists’ and I can guarantee you that they aren’t.’ **‘As a Lebanese-American who deals with international clients, all the sudden my metadata may be looked at closer. [That] could create suspicion on me where none should exist,’** Shadid said.  
“And that goes for every Arab and Muslim in the community.”

**Warrant:** Most Americans are hyper aware of the actions of those of Middle Eastern origin and they are more closely observed, which is unconstitutional.

Fernandez, Belen. "Muslim Group Sues NSA Over Surveillance." *In These Times*. N.p., 19 July 2013. Web. 04 Oct. 2013.  
<[http://inthesetimes.com/article/15323/muslim\\_group\\_joins\\_lawsuit\\_against\\_nsa\\_surveillance/](http://inthesetimes.com/article/15323/muslim_group_joins_lawsuit_against_nsa_surveillance/)>.

“Zahra Billoo, executive director of CAIR's San Francisco Bay Area chapter, observed that **‘massive warrantless surveillance of law-abiding citizens has a profoundly negative impact on the constitutionally protected right of association utilized by all**

those who seek to engage in public advocacy.’ And U.S. Muslims are well aware that warrantless surveillance can hamper one's ability to perform mundane tasks that have nothing to do with public advocacy, much less with breaking the law. In May, for example, Gawker noted a report that FBI agents had visited the home of Talal al Rouki, a Saudi student in Michigan, after a neighbor alerted authorities to the fact that he had been spotted walking outdoors with a ‘bullet-colored’ pressure cooker. As it turned out, no terrorist operation was underway and the pressure cooker was simply being used to transport food—which had also been prepared in the device—from al Rouki’s house to the house of his friend. One of the FBI agents is said to have warned the student to “be more careful moving around with such things.”

**Warrant:** The disproportionate spying on American Muslims creates a climate a fear and suspicion in their communities, eroding trust between communities and states.

Shamas, Diala. "Mapping Muslims." The Muslim American Civil Liberties Coalition (MACLC), The Creating Law Enforcement Accountability & Responsibility (CLEAR), The Asian American Legal Defense and Education Fund (AALDEF), 11 Mar. 2013. Web. 4 Oct. 2013.  
<<http://www.law.cuny.edu/academics/clinics/immigration/clear/Mapping-Muslims.pdf>>.

“Proponents of the sprawling surveillance enterprise have argued that, regardless of its inefficacy, mere spying on a community is harmless because it is clandestine and that those who are targeted should have nothing to fear, if they have nothing to hide. Our findings, based on an unprecedented number of candid interviews with American Muslim community members, paint a radically different picture. We have found that surveillance of Muslims’ quotidian activities has created a pervasive climate of fear and suspicion, encroaching upon every aspect of individual and community life. Surveillance has chilled constitutionally protected rights—curtailing religious practice, censoring speech and stunting political organizing. Every one of our interviewees noted that they were negatively affected by surveillance in some way -

**whether it was by reducing their political or religious expression, altering the way they exercised those rights (through clarifications, precautions, or avoiding certain interlocutors), or in experiencing social and familial pressures to reduce their activism. Additionally, surveillance has severed the trust that should exist between the police department and the communities it is charged with protecting.”**

**Warrant:** There are communal and social consequences of surveillance.

Shamas, Diala. "Mapping Muslims." The Muslim American Civil Liberties Coalition (MACLC), The Creating Law Enforcement Accountability & Responsibility (CLEAR), The Asian American Legal Defense and Education Fund (AALDEF), 11 Mar. 2013. Web. 4 Oct. 2013.  
<<http://www.law.cuny.edu/academics/clinics/immigration/clear/Mapping-Muslims.pdf>>.

**“Section Three turns to the communal and social consequences of surveillance. As American Muslims learn that members of their own communities are recruited as informants or undercover officers to spy on their communities, an atmosphere of mistrust has settled in. Interviewees unanimously observed that everyone scrutinizes everyone, noting particular hesitation with regards to new faces in the community, or converts to Islam. Many interviewees admitted to shunning individuals who behaved differently, awkwardly, or even those who showed interest in political topics or in exploring Islam. Similarly, some described an aversion to those who appeared overtly religious or political, because they were assumed to be more likely targets of surveillance. Finally, in addition to suspicion within the American Muslim community, the section outlines consequences of NYPD scrutiny on American Muslim communities’ relationships with non-Muslims. American Muslims fear that non-Muslim Americans will view them with suspicion because law enforcement has branded them a population “of concern” – work or school relationships have suffered as a result, and Muslims’ political marginalization has been compounded.”**

**Analysis:** This law and practice is flat out discriminatory. We directly target communities of Muslims and Arabs because of our own stigmatization. All you have to do is use very persuasive and this point is easy to win, even if we solve terrorism or something with NSA. Is it justified to create an entire community of “others” just to say we beat terrorism? Will we sacrifice our social standing, on things like racism, for the tiny possibility we might overhear a text about a terrorist plot?

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**A/2 – NSA Surveillance is Islamophobic**

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**Answer:** NSA policies aren't Islamophobic.

**Warrant:** We don't spy on Mosques, but if our restriction was lifted, we would have a much more holistic understanding of our national security.

"Obama's Snooping Excludes Mosques, Missed Boston Bombers." *Investors Business Daily*. N.p., 6 Oct. 2012. Web. 4 Oct. 2013. <<http://news.investors.com/ibd-editorials/061213-659753-all-intrusive-obama-terror-drag-net-excludes-mosques.htm>>.

**"Since October 2011, mosques have been off-limits to FBI agents. No more surveillance or undercover string operations** without high-level approval from a special oversight body at the Justice Department dubbed the Sensitive Operations Review Committee. **Before mosques were excluded from the otherwise wide domestic spy net the administration has cast, the FBI launched dozens of successful sting operations against homegrown jihadists — inside mosques — and disrupted dozens of plots against the homeland. If only they were allowed to continue, perhaps the many victims of the Boston Marathon bombings would not have lost their lives and limbs.** The FBI never canvassed Boston mosques until four days after the April 15 attacks, and it did not check out the radical Boston mosque where the Muslim bombers worshipped."

**Warrant:** NSA surveillance isn't racism or Islamophobic, it's merely upholding national security.

Theoharis, Jeanne. "Who Is the Target of NSA Surveillance?" *The Chronicle of Higher Education*. N.p., 17 June 2013. Web. 04 Oct. 2013. <<http://chronicle.com/blogs/conversation/2013/06/17/we-need-to-ask-who-is-the-target-of-nsa-surveillance/>>.

“Indeed, the immense controversy and political chatter that is still going on seems a bit hypocritical. After revelations came out of the New York City Police Department’s intrusive surveillance of Muslims—including undercover surveillance of mosques, community centers, online chat rooms, restaurants, and Muslim Student Associations—**58 percent of New Yorkers found no problem with that. As of 2011, the FBI had 15,000 informants, mostly aimed at the Muslim community, and 45,000 ‘unofficial’ ones providing extensive information on Muslim-American life and association.** Informants are regularly instructed by their FBI or NYPD handlers to listen and probe for anti-American sentiments. And that is done under the cover of the law. In 2003, the Department of Justice issued guidelines outlawing racial profiling—made a blanket exception for “national security” and “border integrity”; the Obama administration has continued that exception. **Faced with extensive revelations of the wide-reaching surveillance of Muslims, the American public has stood by; content that the Obama administration is doing what is necessary for “our national security.”**

**Analysis:** There really isn’t an impact to observing one religious group over another, as long as action aren’t taken on any particular group. Also President Obama has attempted to support Muslims and Arabs by making it illegal to eavesdrop or even spy in Mosques. The U.S. is slowly making progress towards the end of “otherization.” Make Con prove there are actual impacts and ask why they’re unique to that community and not everyone being spied on.

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**CON – Surveillance Undermines Corporate Cooperation**

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**Argument:** Surveillance undermines public/private sector relations.

**Warrant:** Most surveillance and information acquisition occurs in the private sector.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

“It is unthinkable that governments would not seek to use these technologies to promote the public good; it is even more unthinkable that private parties would not try to harness them as well. **In fact, much, if not most surveillance and information collection these days is in private hands. Corporations invest heavily in security and surveillance, especially to protect sensitive information in their computer networks. Private security cameras still outnumber those operated by the government. Many businesses make money from collecting, analyzing, and selling consumer data; in fact, governments increasingly purchase information from corporations instead of collecting it themselves.**”

**Warrant:** A list of the companies that the NSA works with.

Hirsh, Michael. "Silicon Valley Doesn't Just Help the Surveillance State—It Built It." The Atlantic. The Atlantic, 10 June 2013. Web. 06 Oct. 2013.  
<<http://www.theatlantic.com/national/archive/2013/06/silicon-valley-doesnt-just-help-the-surveillance-state-it-built-it/276700/>>.

“**Among these contributing companies reportedly is Palantir Technologies, the Palo Alto, Calif., company that several news outlets have identified as a close associate of**

the NSA's. Another is Eagle Alliance, a joint venture of Computer Sciences Corp. and Northrup Grumman that runs the NSA's IT program and describes itself on its website as "the Intelligence Community's premier Information Technology Managed Services provider." ("We made them part of the team," says Hayden.) Another is Booz Allen Hamilton, the international consultancy for which the reported whistleblower in the NSA stories, contractor Edward Snowden, began working three months ago. In 2002, Booz Allen Hamilton won a \$63 million contract for an early and controversial version of the current data-mining program, called Total Information Awareness, which was later cancelled after congressional Democrats raised questions about invasion of privacy in the early 2000s. The firm's current vice-chairman, Mike McConnell, was DNI in the George W. Bush administration and, before that, director of the NSA. Clapper is also a former Booz Allen executive."

**Warrant:** The government and businesses act as partners in surveillance.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

**"Government and businesses are increasingly partners in surveillance, data mining, and information analysis.** Private companies and government agencies use databases to develop profiles of individuals who are likely to violate laws, drive up costs, or cause problems, and then deflect them, block them, or deny them benefits, access, or opportunities."

**Warrant:** The danger of private power is that they are not confined by the Constitution.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.



<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

**“Private power and public-private cooperation pose a third danger. Because the Constitution does not reach private parties, government has increasing incentives to rely on private enterprise to collect and generate information for it. Corporate business models, in turn, lead companies to amass and analyze more and more information about people in order to target new customers and reject undesirable ones. As computing power increases and storage costs decline, companies will seek to know more and more about their customers and sell this valuable information to other companies and to the government.”**

**Warrant:** The Supreme Court ruled that there is no privacy in business records.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

**“The Supreme Court has held that there is no expectation of privacy in business records and information that people give to third parties like banks and other businesses; in the digital age this accounts for a vast amount of personal information.”**

**Impact Warrant:** Constitutional limits do not apply to private parties; this allows the government to circumvent fourth amendment restrictions.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

**“Finally, whatever constitutional limits might restrain government do not apply to private parties, who can freely collect, collate, and sell personal information back to the government free of Fourth Amendment restrictions, effectively allowing an end-run around the Constitution.”**

**Impact Warrant:** U.S. government trying to provide surveillance immunity to businesses.

Gorman, Siobhan. "NSA's Domestic Spying Grows As Agency Sweeps Up Data." The Wall Street Journal. The Wall Street Journal, 10 Mar. 2008. Web. 6 Oct. 2013. <<http://online.wsj.com/article/SB120511973377523845.html>>.

**“The White House wants to give companies that assist government surveillance immunity from lawsuits alleging an invasion of privacy, but Democrats in Congress have been blocking it. The Terrorist Surveillance Program has spurred 38 lawsuits against companies. Current and former intelligence officials say telecom companies' concern comes chiefly because they are giving the government unlimited access to a copy of the flow of communications, through a network of switches at U.S. telecommunications hubs that duplicate all the data running through it. It isn't clear whether the government or telecom companies control the switches, but companies process some of the data for the NSA, the current and former officials say.”**

**Impact Warrant:** There are excessive and unbalanced concentrations of power in the private sector in the status quo.

"The Social Contract and Constitutional Republics." Constitution Society. Constitution Society, 2007. Web. 6 Oct. 2013. <<http://www.constitution.org/soc1cont.htm>>.

**“Around the end of the 19th century, however, it became increasingly apparent that excessive and unbalanced concentrations of power in the private sector could subvert the system of checks and balances in government, and the first anti-trust**

laws were passed to try to provide a check on those undue influences. Unfortunately, such legislation has not been entirely effective, and we now face a situation in which to an intolerable degree the real powers of government are being exercised not by constitutional bodies but by secret cabals based in the private sector but extending throughout government, cabals which are increasingly coherent and increasingly abusive of the rights of the people, including the right to have government be accountable to them and not to a power elite.”

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**A/2 – Surveillance Undermines Corporate Cooperation**

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**Answer:** This relationship has supported the innovation of modern technologies.

**Warrant:** The NSA served as the innovator in the Internet and American computer industry.

Hirsh, Michael. "Silicon Valley Doesn't Just Help the Surveillance State—It Built It."

The Atlantic. The Atlantic, 10 June 2013. Web. 06 Oct. 2013.

<<http://www.theatlantic.com/national/archive/2013/06/silicon-valley-doesnt-just-help-the-surveillance-state-it-built-it/276700/>>.

**“During most of the Cold War, he says, the NSA was the cutting-edge innovator, helping to create the Internet and American computer industry back in the 1950s and '60. ‘We were America's Information-Age enterprise during America's Industrial Age. We had the habit of saying if we need it, we're going to have to build it,’ Hayden says. ‘But in the outside world there was a technological explosion in the two universes that had been at the birth of the agency almost uniquely ours: telecommunications and computers.’ ”**

**Answer:** The NSA is only able to effectively receive all technology with the help of corporations.

**Warrant:** A list of the companies that the NSA works with.

Hirsh, Michael. "Silicon Valley Doesn't Just Help the Surveillance State—It Built It."

The Atlantic. The Atlantic, 10 June 2013. Web. 06 Oct. 2013.

<<http://www.theatlantic.com/national/archive/2013/06/silicon-valley-doesnt-just-help-the-surveillance-state-it-built-it/276700/>>.

“Well before 9/11, he says, he realized that as the Internet era was taking off, the NSA was failing in its mission to collect signals intelligence, or sigint, and effectively “going deaf,” in the critique of the time. Hayden admitted this, surprisingly, in an open session of the House Permanent Select Committee on Intelligence in 2000, telling the members what he thought needed to happen if the NSA was going to get in front of the data.”

**Answer:** The acquisition of private information is a result of general Internet use and expansion in order to advertise to consumers.

**Warrant:** Billions are spent on surveillance for the purpose of advertising to individual Internet users.

Richards, Neil M. "The Dangers of Surveillance." *Harvard Law Review*. Washington University School of Law, 2013. Web. 6 Oct. 2013.  
<<http://www.harvardlawreview.org/symposium/papers2012/richards.pdf>>.

“At the broadest level, we are building an Internet that is on its face free to use, but is in reality funded by billions of transactions where advertisements are individually targeted to Internet users based upon detailed profiles of their reading and consumer habits. Such “behavioral advertising” is a multi-billion dollar business, and is the foundation on which the success of companies like Google and Facebook have been built. One recent study concludes that this form of surveillance is so ingrained into the fabric of the web that “a small number of companies have a window into most of our movement online.”

**Warrant:** “Big Data” serves to allow for more efficient marketing.

Richards, Neil M. "The Dangers of Surveillance." *Harvard Law Review*. Washington University School of Law, 2013. Web. 6 Oct. 2013.  
<<http://www.harvardlawreview.org/symposium/papers2012/richards.pdf>>.

**“Big Data surveillance and analysis thus affects the commercial power of consumers, identifying their times of relative weakness and allowing more effective marketing to nudge them in the directions watchful companies desire.”**

**Analysis:** There are multiple answers that you can make to the argument of a harmful relationship between the government and corporations. You can impact to innovation by stating that the only reason things such as the Internet and the computer exist is due to government investment in these products. Otherwise, you could impact to the efficacy of the protections the government provides to citizens; the only way the NSA can receive enough information to protect citizens is through these partnerships. The third response would be to show that business use of personal information will happen with or without NSA- the difference is that in the status quo the information is used for both marketing and security purposes.

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**CON – The NSA Lacks Adequate Checks and Balances**

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**Argument:** The NSA allows the executive to act independently of the Congress.

**Warrant:** The Nation’s war powers are distributed to both the president and the congress.

Bloom, Robert. "The Constitutional Infirmary of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

“The Constitution distributes power either exclusively or concurrently among the three branches of government. **The Framers decided on the latter and vested war powers in Congress through seven clauses in the Constitution, while also providing the President the significant power to direct and control war as the Commander-in-Chief. Due to these constitutional grants, the nation's war powers must be understood to be held concurrently between the executive and Congress.**”

**Warrant:** An executive action independent of congress is unconstitutional and sacrifices individual rights.

Bloom, Robert. "The Constitutional Infirmary of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

**“The specific regulation by Congress based upon war powers shared concurrently with the President provides a constitutional requirement that cannot be bypassed or ignored by the President. The President's choice to do so violates the Constitution and risks the definite sacrifice of individual rights for speculative gain from warrantless action.”**

**Warrant:** The NSA was created in the vague directives of the executive.

Bloom, Robert. "The Constitutional Infirmary of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

**“No congressional statute created the NSA or restricted its permissible scope of activities. Instead, the agency was born from executive directives-directives vague in their delegation of authority and in their definition of the type of information permissible for the agency to collect.”**

**Warrant:** The Executive is using a broad interpretation of Congress allowance to circumvent FISA requirements.

Bloom, Robert. "The Constitutional Infirmary of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.



**“There is no doubt that Congress provided the President the authority to employ the armed forces of the United States against the Taliban in Afghanistan in the effort to catch the members of Al Qaida who were responsible for planning and executing the terrorist attacks. It is a very different contention, however, that this broad and general language specifically authorized the President to circumvent FISA' s statutory requirements.”**

**Argument:** The U.S. government discourages whistleblowers from making government actions known.

**Warrant:** U.S. government undermines whistleblowers ability to have a fair trial in the U.S.

Snowden, Edward. "Edward Snowden: NSA Whistleblower Answers Reader Questions." The Guardian. The Guardian, 17 June 2013. Web. 06 Oct. 2013.  
<<http://www.theguardian.com/world/2013/jun/17/edward-snowden-nsa-files-whistleblower>>.

**“1) First, the US Government, just as they did with other whistleblowers, immediately and predictably destroyed any possibility of a fair trial at home, openly declaring me guilty of treason and that the disclosure of secret, criminal, and even unconstitutional acts is an unforgivable crime. That's not justice, and it would be foolish to volunteer yourself to it if you can do more good outside of prison than in it.”**

**Warrant:** The 2012 National Defense Authorization Act allows the government to detain whistleblowers.

Nelson, Steven. "NSA Whistle-Blowers Defend Snowden's Decision to Flee." US News. U.S.News & World Report, 25 July 2013. Web. 06 Oct. 2013.  
<<http://www.usnews.com/news/blogs/washington-whispers/2013/07/25/nsa-whistle-blowers-defend-snowdens-decision-to-flee>>.

**“Drake said Snowden almost certainly would have been detained if he did not flee to Hong Kong before releasing top secret documents on the surveillance programs conducted by the NSA. He cited a provision first included in the 2012 National Defense Authorization Act allowing the government to detain Americans citizens ‘engaged in hostilities against the United States’ without trial.”**

**Warrant:** The current administration has charged six people with the Espionage Act.

Friedersdorf, Conor. "Let's Give Every NSA Employee an Anonymous Whistleblowing Opportunity." The Atlantic. The Atlantic, 15 Aug. 2013. Web. 06 Oct. 2013.  
<<http://www.theatlantic.com/politics/archive/2013/08/lets-give-every-nsa-employee-an-anonymous-whistleblowing-opportunity/278700/>>.

**“The Obama administration has charged more people (six) under the Espionage Act for the alleged mishandling of classified information than all past presidencies combined. (Prior to Obama, there were only three such cases in American history, one being Daniel Ellsberg, of Nixon-era Pentagon Papers fame.)** The most recent Espionage Act case is that of former CIA officer John Kiriakou, charged for allegedly disclosing classified information to journalists about the horrors of waterboarding. Meanwhile, his evil twin, former CIA officer Jose Rodriguez, has a best-selling book out bragging about the success of waterboarding and his own hand in the dirty work.”

**Analysis:** The two ways to check a government organization/action is to first have another branch define the limits of that organization/action or to second have the media show the actions to the general public. Both mechanisms are constrained in the status quo to limit the NSA. Therefore, it is almost impossible to limit what can be done in this agency. The obvious impacts of this are unchecked power and lacking accountability.

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## **A/2 – The NSA Lacks Adequate Checks and Balances**

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**Answer:** There are certain situations of checks and balances being uneven that are justified.

**Warrant:** Justice Jackson set precedent in the *Youngstown v. Sawyer* on how the separation of powers works between the congress and President.

Bazan, Elizabeth B. "Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information." Congressional Research Service. The Library of Congress, 5 Jan. 2006. Web. 6 Oct. 2013.  
<<http://www.fas.org/sgp/crs/intel/m010506.pdf>>.

“The Steel Seizure Case is not remembered as much for the majority opinion as it is for the concurring opinion of **Justice Robert Jackson, who took a more nuanced view and laid out what is commonly regarded as the seminal explication of separation-of-powers matters between Congress and the President.** Justice Jackson set forth the following oft-cited formula:

**1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. . . .** A seizure executed by the President pursuant to an Act of Congress would be supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.

**2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.** Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on

independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.

**3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.** Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.”

**Analysis:** This evidence basically states that in each circumstance, the president has a certain amount of power in comparison to congressional consent. However, even when no congressional consent is given, the executive still has a limited amount of power in times of emergency.

**Warrant:** The Administration does take into account congressional legislation and judicial precedent.

Bloom, Robert. "The Constitutional Infirmary of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

“In advancing the first and third arguments, **the administration relies upon a broad interpretation of the 2001 joint resolution of Congress referred to as the Authorization for Use of Military Force (AUMF).** In addition, **the administration relies upon the 2004 United States Supreme Court case, Hamdi v. Rumsfeld, that**

**interpreted the AUMF broadly enough to authorize the detention of an American citizen captured on the battlefield of Afghanistan.”**

**Warrant:** The Katz judicial decision concluded that nothing should limit the power of the executive to protect the nation from potential attack.

Bazan, Elizabeth B. "Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information." Congressional Research Service. The Library of Congress, 5 Jan. 2006. Web. 6 Oct. 2013.  
<<http://www.fas.org/sgp/crs/intel/m010506.pdf>>.

“The Katz Court noted that its holding did not extend to cases involving national security, and Congress did not then attempt to regulate national security surveillance. Title III, as originally enacted, contained an exception. It stated that ‘**Nothing contained in this chapter or in section 605 of the Communications Act . . . shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities.**’

**Answer:** The oversight of NSA is currently distributed between three branches.

**Warrant:** Multiple branches have the ability to review intelligence programs and have additional oversight responsibilities.

Heyman, David. "Finding the Enemy Within." Center for Strategic and International Studies. Center for Strategic and International Studies, post 2007. Web. 6 Oct. 2013. <[http://csis.org/images/stories/HomelandSecurity/071022\\_Chap4-FindingTheEnemyWithin.pdf](http://csis.org/images/stories/HomelandSecurity/071022_Chap4-FindingTheEnemyWithin.pdf)>.

**“Oversight for DI currently exists in each of the three branches of government. At the Executive branch level, agencies have independent inspector generals with the power to review intelligence programs (among others) either in part or in whole. In addition, the Justice Department, which serves as the country’s law enforcement agency, may have additional oversight responsibilities in certain circumstances.”**

**Warrant:** The Executive is obligated to keep congress fully informed; the judicial can strike down unconstitutional statutes.

Heyman, David. "Finding the Enemy Within." Center for Strategic and International Studies. Center for Strategic and International Studies, post 2007. Web. 6 Oct. 2013. <[http://csis.org/images/stories/HomelandSecurity/071022\\_Chap4-FindingTheEnemyWithin.pdf](http://csis.org/images/stories/HomelandSecurity/071022_Chap4-FindingTheEnemyWithin.pdf)>.

**“The Executive branch has statutory obligations to ensure that Congressional Intelligence Committees are kept “fully and currently informed” on intelligence activities. 42These obligations extend to the newly created Director of National Intelligence and intelligence agency heads. It requires them to furnish material concerning any and all intelligence activities in a timely manner. The judiciary branch, too, has an oversight function. A court may strike down unconstitutional statutes or improper actions by the Executive branch.”**

**Warrant:** Courts have accepted that the President has ability to conduct surveillance but does not limit the legislature from being able to set limits to that power.

Bazan, Elizabeth B. "Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information." Congressional Research Service. The Library of Congress, 5 Jan. 2006. Web. 6 Oct. 2013. <<http://www.fas.org/sgp/crs/intel/m010506.pdf>>.

**“While courts have generally accepted that the President has the power to conduct domestic electronic surveillance within the United States inside the constraints of the Fourth Amendment, no court has held squarely that the Constitution disables the Congress from endeavoring to set limits on that power.”**

**Analysis:** The first response to the inadequate check and balance between the executive and the other two branches is that it is necessary in times of emergency. The other response would be that there are existing mechanisms by which the NSA can be inspected and checked; these mechanisms are just not working as efficiently as they should.

### **CON – NSA Surveillance Incentivizes Corporate Offshoring**

**Argument:** NSA Domestic Surveillance incentivizes the development of offshore havens for companies.

**Warrant:** NSA has been collecting and storing data of companies and citizens since 2010.

Risen, James. "N.S.A. Gathers Data on Social Connections of U.S. Citizens." *The New York Times*. N.p., 28 Sept. 2013. Web. 3 Oct. 2013.  
<[http://www.nytimes.com/2013/09/29/us/nsa-examines-social-networks-of-us-citizens.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/09/29/us/nsa-examines-social-networks-of-us-citizens.html?pagewanted=all&_r=0)>.

**“Since 2010, the National Security Agency has been exploiting its huge collections of data to create sophisticated graphs of some Americans’ social connections that can identify their associates, their locations at certain times, their traveling companions and other personal information, according to newly disclosed documents and interviews with officials. The spy agency began allowing the analysis of phone call and e-mail logs in November 2010 to examine Americans’ networks of associations for foreign intelligence purposes after N.S.A. officials lifted restrictions on the practice, according to documents provided by Edward J. Snowden, the former N.S.A. contractor.”**

**Warrant:** Overseas companies are using data-privacy laws to encourage investors from the US.

Dwoskin, Elizabeth. "NSA Internet Spying Sparks Race to Create Offshore Havens for Data Privacy." *The Wall Street Journal*. N.p., 27 Sept. 2013. Web. 3 Oct. 2013.  
<<http://online.wsj.com/article/SB10001424052702303983904579096082938662594.html>>.

“The U.S. National Security Agency has acknowledged collecting email data about Americans through phone and Internet companies. Silicon Valley companies have said



that they don't give the government unfettered access to user data but that they are barred from disclosing details. **Fueled by the controversy, countries are seeking to use data-privacy laws as a competitive advantage—a way to boost domestic companies that long have sought an edge over Google, Microsoft Corp. and other U.S. tech giants.”**

**Warrant:** Companies are moving overseas.

Dwoskin, Elizabeth. "NSA Internet Spying Sparks Race to Create Offshore Havens for Data Privacy." *The Wall Street Journal*. N.p., 27 Sept. 2013. Web. 3 Oct. 2013. <<http://online.wsj.com/article/SB10001424052702303983904579096082938662594.html>>.

**"Countries are competing to be the Cayman Islands of data privacy," says Daniel Castro, a senior analyst at the Information Technology and Innovation Foundation, a nonpartisan Washington, D.C., think tank that receives funding from the tech industry.”**

**Warrant:** Fewer people want to invest in US tech industries and US based tech systems.

Dwoskin, Elizabeth. "NSA Internet Spying Sparks Race to Create Offshore Havens for Data Privacy." *The Wall Street Journal*. N.p., 27 Sept. 2013. Web. 3 Oct. 2013. <<http://online.wsj.com/article/SB10001424052702303983904579096082938662594.html>>.

“It is too soon to tell if a major shift is under way. But the Information Technology and Innovation Foundation estimates that fallout from revelations about **NSA activities could cost Silicon Valley up to \$35 billion in annual revenue, much of it from lost overseas business. A survey conducted this summer by the Cloud Security Alliance, an industry group, found that 56% of non-U.S. members said security concerns made it**

**less likely that they would use U.S.-based cloud services. Ten percent said they had canceled a contract.”**

**Warrant:** It’s hard to undo any damages by the NSA.

Dwoskin, Elizabeth. "NSA Internet Spying Sparks Race to Create Offshore Havens for Data Privacy." *The Wall Street Journal*. N.p., 27 Sept. 2013. Web. 3 Oct. 2013. <<http://online.wsj.com/article/SB10001424052702303983904579096082938662594.html>>.

**“It could be tough for U.S. companies to undo any damage, particularly when the extent of NSA activities is secret** and other nations have been critical of the U.S. On Tuesday, Brazilian President Dilma Rousseff in a United Nations address assailed U.S. snooping on her country. Last week she canceled a planned visit to Washington.”

**Analysis:** This is an interesting point and something that’s pretty new. Basically, the NSA has been collecting data since 2010. This continuous data collection threatens the privacy of companies in the United States (because the government gets to know whatever they want – including possibly illegal or shady deals). Consequently, companies have begun to move to other countries that realize protecting privacy laws can offer them a competitive advantage. This is bad for the United States because it means companies are offshoring financing and jobs, giving you a rhetorically persuasive argument for lay judges as to why NSA is bad for our economic. PS, don’t forget – the tech industry is critical to the US economy!

## A/2 – NSA Surveillance Incentivizes Corporate Offshoring

**Answer:** NSA does not incentive offshore havens

**Warrant:** There's not much of a difference between US privacy laws between US and European Countries.

Dwoskin, Elizabeth. "NSA Internet Spying Sparks Race to Create Offshore Havens for Data Privacy." *The Wall Street Journal*. N.p., 27 Sept. 2013. Web. 3 Oct. 2013. <<http://online.wsj.com/article/SB10001424052702303983904579096082938662594.html>>.

**"In the long run, there won't be any difference between what the U.S. or Germany or France or the U.K. is doing,"** says Roberto Valerio, whose German cloud-storage company, CloudSafe GmbH, reports a 25% rise in business since the NSA revelations. **'At the end of the day, some agency will spy on you,' he says."**

**Answer:** Offshoring is dangerous for IT companies because it creates vulnerabilities and includes a greater number of legal grey areas.

Ramer, Rob. "The Security Challenges of Offshore Development." *The SANS Institute Reading Room*. N.p., 2001. Web. 3 Oct. 2013. <<http://www.sans.org/reading-room/whitepapers/securecode/security-challenges-offshore-development-383?show=security-challenges-offshore-development-383&cat=securecode>>.

**"Offshore development produces a host of potential vulnerabilities for IT companies.** Therefore, security considerations are of utmost importance when a corporation considers 215 SANS Institute 2001, Author retains full rights the global development option. **One security breach threatens the credibility, not only of the IT and network security departments but of the whole company and potentially the**

**nation. Security guarantees must be included in the contract with the offshore vendor, with strict financial penalties for violation.** The vendor must ensure that facilities and all personnel adhere to the client's standards as regards the protection of data and other intellectual property. Security personnel should insist that their company's offshore program managers conduct regular security reviews to ensure the enforcement of security policies and procedures."

**Warrant:** The enforcement of foreign countries' privacy laws is not very strong and can create vulnerabilities for the companies' vital and secret information.

Ramer, Rob. "The Security Challenges of Offshore Development." *The SANS Institute Reading Room*. N.p., 2001. Web. 3 Oct. 2013. <<http://www.sans.org/reading-room/whitepapers/securecode/security-challenges-offshore-development-383?show=security-challenges-offshore-development-383&cat=securecode>>.

**"In addition to trade secrets, customer data, and financial information are often exposed during a software development project. Customer data can easily be used for fraudulent purposes and the incident of international Internet credit card fraud is rising rapidly. In a tightly interconnected world financial system, information on the finances of large corporations can be used for insider trading and manipulation of stock prices. The employees of a foreign company are not subject to U.S. laws. Some countries such as India are aware of cyber crime and are beginning to take a few initial steps. However, the criminal justice systems of most Third World countries, lack the technical and legal framework to investigate and prosecute system break-ins or data theft."**

**Analysis:** The first card explains that NSA laws don't incentivize this type of offshoring. Germany has similar laws, but they've seen an increase in sales in cloud-systems by 25% (Which means there really isn't an impact on the tech industry). Second, it's hard for the pro side to prove causation and you can do enough work on the link level explain correlation, that the next two arguments should be really good. The next two are turns on the impact of offshoring – they

say that it's worse for privacy because the countries we offshore companies' stuff to don't do a very good job of enforcing these privacy laws. It doesn't matter if said countries "have" privacy laws, if they are bad at enforcing them or don't enforce them.

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**CON – NSA Surveillance Undermines the Tech Industry**

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**Argument:** Spying done by the NSA undermines tech companies in international business.

**Warrant:** Backlash from countries like Brazil causes the cost of business to increase.

Winter, Brian. "Brazil's Rousseff targets internet companies after NSA spying." *Reuters News*. Sep. 2013. Web. 1 October 2013.

<<http://www.reuters.com/article/2013/09/12/net-us-usa-security-snowden-brazil-idUSBRE98B14R20130912>>.

**"Angered by reports that the U.S. government spied on her and other Brazilians, President Dilma Rousseff is pushing new legislation that would seek to force Google, Facebook and other internet companies to store locally gathered data inside Brazil. The requirement would be difficult to execute, technology experts say, given high costs and the global nature of the Internet. Still, Rousseff's initiative is one of the most tangible signs of a backlash following revelations that the U.S. National Security Agency monitored emails, phone calls and other communications abroad. The legislation, which is being written by a lawmaker in Rousseff's left-wing Workers' Party and is scheduled to be completed next week, would force foreign-based internet companies to maintain data centers inside Brazil that would then be governed by Brazilian privacy laws, officials said. Internet companies operating in Brazil are currently free to put data centers wherever they like. Facebook Inc, for example, stores its global data in the United States and a new complex in Sweden. Rousseff believes that the change would help shield Brazilians from further U.S. prying into their activities, and she is considering urging other countries to take similar measures when she speaks at the United Nations General Assembly later this month, a senior Brazilian official told Reuters."**

**Warrant:** The inability to reveal information costs businesses customers.

Tsukayama, Hayley. "CloudFlare CEO: 'Insane' NSA gag order is costing U.S. tech firms customers." Sep. 2013. Web. 1 October 2013. <  
<http://www.washingtonpost.com/blogs/the-switch/wp/2013/09/12/cloudflare-ceo-says-insane-nsa-gag-order-is-costing-u-s-tech-firms-customers/>>.

"We've now moved beyond mere talk about how the National Security Agency's surveillance programs may hurt U.S. cloud providers, says Matthew Prince, the chief executive of CloudFlare. **The companies are already feeling the pain. CloudFlare, a Web site security firm and network provider with clients that run the gamut from WikiLeaks to the Duke and Duchess of Cambridge, is getting 50 to 100 calls per day from customers demanding more answers about the firm's involvement with the U.S. National Security Agency, Prince says. But that's information the company can't give out, he explains, and the inability to say anything about government requests is seriously hurting his business.**" "We get calls regularly that say, 'CloudFlare must be working with the NSA,' which we're not," Prince said. "We've gone so far as to litigate requests that did not meet with our processes, but I can't tell you anything beyond that, which is insane." CloudFlare is one of several companies that signed a letter asking the government to let them disclose the number of data requests that they receive from the United States, in the name of transparency with their customers. **With more than 70 percent of its business overseas -- not uncommon for companies with cloud-based services -- CloudFlare is fighting a daily battle to keep its clients around the world from jumping ship to foreign competitors.** Prince said that even being able to share the number, not even the content, of U.S. data requests would make his clients more aware of his company's reputation. "The fundamental thing here is trust. We're in the trust business. These programs threaten that trust," Prince said. **"We've lost customers as a result of this and will continue to lose customers as a result of this."**

**Warrant:** Cancelled contracts have cost \$35 billion, and in the long term, will undermine foreign business with international customers.

Peterson, Andrea. "NSA snooping could cost U.S. tech companies \$35 billion over three years." Aug. 2013. Web. 1 October 2013. <  
<http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/07/nsa-snooping-could-cost-u-s-tech-companies-35-billion-over-three-years/>>.

**"U.S. cloud providers have already lost business over the NSA leaks, but now the Information Technology and Innovation Foundation (ITIF) has a report putting a dollar amount on the short-term costs: \$21.5 to \$35 billion over the next three years. ITIF based these estimates in part on the Cloud Security Alliance survey showing that 10 percent of officials at non-U.S. companies cancelled contracts with U.S. providers and 56 percent of non-U.S. respondents are hesitant to work with U.S. cloud based operators after the leaks. The cloud computing industry is big business: it's estimated to be a \$131 billion market by the end of 2013, and a \$207 billion market by 2016. The U.S. has historically dominated the space. But after the Snowden leaks detailed the level of access the NSA has to data hosted by U.S. companies, European officials and cloud providers raised privacy alarm bells. This leads ITIF to conclude the NSA leaks "will likely have an immediate and lasting impact on the competitiveness of the U.S. cloud computing industry if foreign customers decide the risks of storing data with a U.S. company outweigh the benefits." Even before the NSA leaks, there were rumblings that data given to U.S. companies wasn't safe from U.S. law enforcement thanks to the Patriot Act -- some of which were validated by Microsoft's admission that even E.U.-based cloud data hosted by the company was subject to the law."**

**Warrant:** The Lavabit example shows that companies that don't comply can't afford to stay in business.

Ackerman, Spencer. "Lavabit email service abruptly shut down citing government interference." *The Guardian*. Aug. 2013. 1 October 2013. Web.  
<<http://www.theguardian.com/technology/2013/aug/08/lavabit-email-shut-down-edward-snowden>>.



**“The email service reportedly used by surveillance whistleblower Edward Snowden abruptly shut down on Thursday after its owner cryptically announced his refusal to become "complicit in crimes against the American people." Lavabit, an email service that boasted of its security features and claimed 350,000 customers, is no more, apparently after rejecting a court order for cooperation with the US government to participate in surveillance on its customers. It is the first such company known to have shuttered rather than comply with government surveillance. Silent Circle, another provider of secure online services, announced on later Thursday night that it would scrap its own encrypted email offering, Silent Mail.** The founder of Lavabit, Ladar Levison, wrote on the company's website: "I have been forced to make a difficult decision: to become complicit in crimes against the American people or walk away from nearly ten years of hard work by shutting down Lavabit." The news was first reported the popular news site Boing Boing.”

**Warrant:** Using unjust means (even for security) causes more future violations.

Machan, Tibor R. “Liberty and Hard Cases.” *Hoover Institution*. 2002. Web. 1 October 2013. <[http://mises.org/journals/qjae/pdf/qjae6\\_3\\_6.pdf](http://mises.org/journals/qjae/pdf/qjae6_3_6.pdf)>.

**“Similarly, a ‘minor’ breach of trust can beget more of the same, a little white lie here and there can beget lying as a routine, and so forth. Moral habits promote a principled course of action even in cases where bending or breaking the principle might not seem too harmful to other parties or to our own integrity. On the other hand, granting ourselves ‘reasonable’ exceptions tends to weaken our moral habits; as we seek to rationalize past action, differences of kind tend to devolve into differences of degree. Each new exception provides the precedent for the next, until we lose our principles altogether and doing what is right becomes a matter of happenstance and mood rather than of loyalty to enduring values. The same is true of public action.** When citizens of a country delegate to government, by means of democratic and judicial processes, the power to forge paternalistic public policies such as

banning drug abuse, imposing censorship, restraining undesirable trade, and supporting desirable trade, the bureaucratic and police actions increasingly rely on the kind of violence and intrusiveness that no free citizenry ought to experience or foster. And **the bureaucrats and the police tell themselves, no doubt, that what they're doing is perfectly just and right.** Consider, for starters, that when no one complains about a crime—because it is not perpetrated against someone but rather involves breaking a paternalistic law—to even detect the “crime” requires methods that are usually invasive. Instead of charges being brought by wronged parties, phone tapping, snooping, anonymous reporting, and undercover work are among the dubious means that lead to prosecution. Thus the role of the police shifts from protection and peacekeeping to supervision, regimentation, and reprimand. No wonder, then, that officers of the law are often caught brutalizing suspects instead of merely apprehending them. **Under a paternalistic regime, their goals have multiplied, and thus the means they see as necessary to achieving those goals multiply too. The same general danger of corrupting a free society's system of laws may arise when government is called on to deal with calamities. There is the perception, of course, that in such circumstances the superior powers of government are indispensable, given the immediateness of the danger.** The immediate benefits—a life saved by a marine—are evident. Yet **the dangers of extensive involvement by legal authorities in the handling of nonjudicial problems are no less evident, if less immediate in impact.”**

**Warrant:** Fears of internet security justify moving infrastructure out of the US.

Deibert, Ronald. “Why NSA spying scares the world.” *CNN*. 12 June. 2013. Web. 4 October 2013. <<http://www.cnn.com/2013/06/12/opinion/deibert-nsa-surveillance/>>.

“The revelations that have emerged will undoubtedly trigger a reaction abroad as policymakers and ordinary users realize the huge disadvantages of their dependence on U.S.-controlled networks in social media, cloud computing, and telecommunications, and of the formidable resources that are deployed by U.S. national security agencies to mine

and monitor those networks. For example, **in 2012, Norwegian lawmakers debated a ban on the use by public officials of Google's and Microsoft's cloud computing services.** Although shelved temporarily, **this type of debate will almost certainly be resurrected and spread throughout Europe and other regions as the full scope of U.S.-based "foreign directed" wiretapping and metadata collection sinks in.** Already we can see regional traffic to the United States from Asia, Africa and even Latin America gradually declining, a trend that is almost certainly going to accelerate as those regions ramp up regional network exchange points and local services to minimize dependence on networks under U.S. control. Many of the countries in the Southern Hemisphere are failed or fragile states; many of them are authoritarian or autocratic regimes. No doubt the elites in those regimes will use the excuse of security to adopt more stringent state controls over the Internet in their jurisdictions and support local versions of popular social media companies over which they can exact their own nationalized controls -- a trend that began prior to the NSA revelations but which now has additional rhetorical support. In the age of Big Data, the revelations about NSA's intelligence-gathering programs touched many nerves. The issue of surveillance won't go away, and Americans will need to figure out the appropriate safeguards for liberty in their democracy. It's an important debate, but one that doesn't include us "foreigners" that now make up the vast majority of the Internet users. Americans would do well to consider the international implications of their domestic policies before they come home to bite them."

**Analysis:** This argument here is just that tech companies from the US aren't trusted internationally and privately because they might be compromised by surveillance. The simple harms to the economy are useful in terms of a utilitarian harm, but it also opens a door to deontological arguments against using individuals for collective benefits, which would give you a better shot at outweighing some of the more utilitarian harms of things like preventing terrorism.

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## A/2 – NSA Surveillance Undermines the Tech Industry

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**Answer:** Most companies have experienced no negative impact and the security industry stands to make profits because of increased need for encryption.

**Warrant:** Tech companies won't move because other countries are worse, and there aren't really viable alternatives.

Menn, Joseph. "Analysis: Despite fears, NSA revelations helping U.S. tech industry."

*Reuters news*. 15 Sep. 2013. Web. 4 October 2013.

<<http://www.reuters.com/article/2013/09/15/us-usa-security-snowden-tech-analysis-idUSBRE98E08S20130915>>.

**"There are multiple theories for why the business impact of the Snowden leaks has been so minimal. One is that cloud customers have few good alternatives, since U.S. companies have most of the market and switching costs money. Perhaps more convincing, Amazon, Microsoft and some others offer data centers in Europe with encryption that prevents significant hurdles to snooping by anyone including the service providers themselves and the U.S. agencies. Encryption, however, comes with drawbacks, making using the cloud more cumbersome. On Thursday, Brazil's president called for laws that would require local data centers for the likes of Google and Facebook. But former senior Google engineer Bill Coughran, now a partner at Sequoia Capital, said that even in the worst-case scenario, those companies would simply spend extra to manage more Balkanized systems. Another possibility is that tech-buying companies elsewhere believe that their own governments have scanning procedures that are every bit as invasive as the American programs."**

**Warrant:** There's been almost no impact financially to tech companies.

Menn, Joseph. "Analysis: Despite fears, NSA revelations helping U.S. tech industry."

*Reuters news*. 15 Sep. 2013. Web. 4 October 2013.

<<http://www.reuters.com/article/2013/09/15/us-usa-security-snowden-tech-analysis-idUSBRE98E08S20130915>>.

**"Despite emphatic predictions of waning business prospects, some of the big Internet companies that the former National Security Agency contractor showed to be closely involved in gathering data on people overseas - such as Google Inc. and Facebook Inc. - say privately that they have felt little if any impact on their businesses.** Insiders at companies that offer remote computing services known as cloud computing, including **Amazon and Microsoft Corp, also say they are seeing no fallout.** Meanwhile, **smaller U.S. companies offering encryption and related security services are seeing a jump in business overseas, along with an uptick in sales domestically as individuals and companies work harder to protect secrets.** "Our value proposition had been that it's a wild world out there, while doing business internationally you need to protect yourself," said Jon Callas, co-founder of phone and text encryption provider Silent Circle, where revenue quadrupled from May to June on a small base. 'Now the message people are getting from the newspapers every day is that it's a wild world even domestically.' "

**Warrant:** The studies that calculate 25% hit or \$35 billion hit are both inaccurate.

Menn, Joseph. "Analysis: Despite fears, NSA revelations helping U.S. tech industry."

*Reuters news*. 15 Sep. 2013. Web. 4 October 2013.

<<http://www.reuters.com/article/2013/09/15/us-usa-security-snowden-tech-analysis-idUSBRE98E08S20130915>>.

**"Likewise, last month, six technology trade groups wrote to the White House to urge reforms in the spy programs, citing what it called a "study" predicting a \$35 billion cumulative shortfall by 2016 in the vital economic sector. That number, it turns out, was extrapolated from a security trade group's survey of 207 non-U.S. members -**

and the group, the Cloud Security Alliance, had explicitly cautioned that its members weren't representative of the entire industry. **"I know you want sectors and numbers, but I don't have it," said Ed Black**, president of the Computer & Communications Industry Association, one of the trade groups behind the letter. **"Anybody who tells you they do is making it up."** The trade groups aren't the only ones issuing dismal, and headline-grabbing, forecasts. **Forrester Research analyst James Staten wrote of the \$35 billion figure: "We think this estimate is too low and could be as high as \$180 billion, or a 25 percent hit to overall IT service provider revenues."** Staten's comments generated dozens of media stories, some of which neglected to mention that **Staten said the worst would come to pass only if businesses decided that spying was a bigger issue than the savings they gained from a shift to cloud computing. In an interview with Reuters, Staten said he didn't believe that would be the case. "I don't think there's going to be a significant pullback," he said, though the rate of growth could slow for a couple of years."**

**Warrant:** The encryption sector is seeing a sharp increase in business.

Menn, Joseph. "Analysis: Despite fears, NSA revelations helping U.S. tech industry."

*Reuters news*. 15 Sep. 2013. Web. 4 October 2013.

<<http://www.reuters.com/article/2013/09/15/us-usa-security-snowden-tech-analysis-idUSBRE98E08S20130915>>.

"As for the upside, so far only a minority of people and businesses are tackling encryption on their own or moving to privacy-protecting Web browsers, but encryption is expected to get easier with more new entrants. Snowden himself said that strong encryption, applied correctly, was still reliable, even though the NSA has cracked or circumvented most of the ordinary, built-in security around Web email and financial transactions. James Denaro, a patent attorney with security training in Washington, was already using Pretty Good Privacy (PGP), a complicated system for encrypting email, before the Snowden leaks. Afterward, he adopted phone and text encryption as well to protect client information. **"One of the results we see from Snowden is an increased**

awareness across the board about the incredible cyber insecurity," Denaro said. **Some early adopters of encryption have senior jobs inside companies, and they could bring their habits to the office and eventually change the technology habits of the whole workplace,** in the same way that executive fondness for iPhones and iPads prompted more companies to allow them access to corporate networks. **"Clients are now inquiring how they can protect their data overseas, what kinds of access the states might have and what controls or constraints they could put in with residency or encryption,"** said Gartner researcher Lawrence Pingree, formerly chief security architect at PeopleSoft, later bought by Oracle. **Richard Stiennon, a security industry analyst and author, predicted that security spending will rise sharply.** A week ago, Google said it had intensified encryption of internal data flows after learning about NSA practices from Snowden's files, and consultants are urging other big businesses to do the same. **Stiennon said that after more companies encrypt, the NSA and other agencies will spend more to break through, accelerating a lucrative cycle. "They will start focusing on the encrypted data, because that's where all the good stuff is,"** Stiennon said. Already, in a fiscal 2013 federal budget request from the intelligence community published this month by the Washington Post, officials wrote that investing in "groundbreaking cryptanalytic capabilities" was a top priority."

**Analysis:** This basically indicts the 2 studies that show that there are harms, and shows that companies are admitting there's really a minimal impact overall. Also, the last piece of evidence turns their argument because it shows that because people fear for security and encryption services, the demand for the sector is increasing, which is increasing their value.

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**CON – NSA Surveillance Lacks Oversight**

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**Argument:** There is little to NO oversight on NSA domestic spying programs.

**Warrant:** There is little accountability for the NSA program.

Bamford, James. "NSA: Listening to Everyone — except Oversight." *Reuters*. N.p., 27 Aug. 2013. Web. 04 Oct. 2013. <<http://blogs.reuters.com/great-debate/2013/08/26/nsa-listening-to-everyone-except-oversight/>>.

**“The NSA’s troubles are anything but new. According to a 175-page Justice Department document, still classified at a level above top secret, the department launched a highly secret and unprecedented agency-wide criminal investigation of NSA in 1975, including reading the Miranda rights to many senior employees. The little-known investigation by the Justice Department’s Criminal Division focused on widespread illegal targeting of American communications, digital as well as voice, which was uncovered by a commission chaired by then Vice President Nelson Rockefeller. This report was declassified and released to me under a Freedom of Information request, but then it was reclassified by NSA as Top Secret Umbra, a codeword for the agency’s most sensitive information. It reveals that the agency officials were less than helpful in the investigation, as I explain in my 2009 book, *The Shadow Factory*. Dougald D. McMillan, author of the task force’s final report, wrote, ‘One typically had to ask the right question to elicit the right answer or document.’ He pointed out ‘it is likely, therefore, that we had insufficient information on occasion to frame the ‘magic’ question.’ In the end, despite the fact that the task force had managed to uncover no fewer than 23 different categories of questionable electronic-surveillance activities, they recommended against prosecution because of the highly secret nature of the NSA’s activities and the agency’s penchant for obfuscation. ‘There is likely to be,’ the report said, ‘much ‘buck-passing’ from subordinate to superior, agency to agency, agency to board or committee, board or committee to the President, and**



**from the living to the dead.’ Rather than point a finger at any one official, the task force instead indicted the national security system as a whole — a system that granted the NSA and other agencies ‘too much discretionary authority with too little accountability.’ ”**

**Warrant:** The lack of accountability over the NSA program has ballooned out of control.

Bamford, James. "NSA: Listening to Everyone — except Oversight." *Reuters*. N.p., 27 Aug. 2013. Web. 04 Oct. 2013. <<http://blogs.reuters.com/great-debate/2013/08/26/nsa-listening-to-everyone-except-oversight/>>.

**“As the recently released surveillance court documents clearly show, that excess of authority and inadequate accountability has ballooned over the years. At the same time, technology — from cell phones to the Internet — has given the NSA the ability to expand its eavesdropping capabilities exponentially. For example, according to the surveillance court, the NSA “acquires more than 250 million Internet communications each year.”**

**Warrant:** The NSA repeatedly lies to Senate Committees and has no consequences for knowingly deceiving lawmakers and regulators.

Bamford, James. "NSA: Listening to Everyone — except Oversight." *Reuters*. N.p., 27 Aug. 2013. Web. 04 Oct. 2013. <<http://blogs.reuters.com/great-debate/2013/08/26/nsa-listening-to-everyone-except-oversight/>>.

**“Another change appears to be the lack of any restraint today when it comes to lying and deception to the oversight bodies, weak as they already are, as well as the public. The formerly secret surveillance court ruling points out that senior agency officials were providing the judges with ‘repeated inaccurate statements.’**  
Meanwhile, James Clapper, the director of national intelligence, appeared fully willing and able to tell untruths to his Senate intelligence committee overseers about

**NSA’s massive domestic surveillance program that is targeting every American’s telephone records.”**

**Warrant:** Reviewing Courts are ineffective and biased.

Lichtblau, Eric. "In Secret, Court Vastly Broadens Powers of N.S.A." *The New York Times*. N.p., 6 July 2013. Web. 4 Oct. 2013.  
<[http://www.nytimes.com/2013/07/07/us/in-secret-court-vastly-broadens-powers-of-nsa.html?partner=rss&emc=rss&\\_r=1&](http://www.nytimes.com/2013/07/07/us/in-secret-court-vastly-broadens-powers-of-nsa.html?partner=rss&emc=rss&_r=1&)>.

**“In more than a dozen classified rulings, the nation’s surveillance court has created a secret body of law giving the National Security Agency the power to amass vast collections of data on Americans while pursuing not only terrorism suspects, but also people possibly involved in nuclear proliferation, espionage and cyberattacks, officials say. . . Unlike the Supreme Court, the FISA court hears from only one side in the case — the government — and its findings are almost never made public. A Court of Review is empaneled to hear appeals, but that is known to have happened only a handful of times in the court’s history, and no case has ever been taken to the Supreme Court.** In fact, it is not clear in all circumstances whether Internet and phone companies that are turning over the reams of data even have the right to appear before the FISA court.”

**Warrant:** Over half of Americans say there isn’t enough oversight with NSA.

Swanson, Emily. "Poll: NSA Oversight Is Inadequate, Most Americans Say." *The Huffington Post*. TheHuffingtonPost.com, 17 Aug. 2013. Web. 04 Oct. 2013.  
<[http://www.huffingtonpost.com/2013/08/17/nsa-oversight-poll\\_n\\_3769727.html](http://www.huffingtonpost.com/2013/08/17/nsa-oversight-poll_n_3769727.html)>.

**“By a 53 percent to 18 percent margin, most Americans said that federal courts and congressionally mandated rules do not provide enough supervision over the government's collection of telephone and Internet data.”**

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**A/2 – NSA Surveillance Lacks Oversight**

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**Answer:** There is adequate oversight/regulation.

**Warrant:** There are 11 judges who are required to sign the requests for the NSA – none have been denied. There is regulation.

Lichtblau, Eric. "In Secret, Court Vastly Broadens Powers of N.S.A." *The New York Times*. N.p., 6 July 2013. Web. 4 Oct. 2013.  
<[http://www.nytimes.com/2013/07/07/us/in-secret-court-vastly-broadens-powers-of-nsa.html?partner=rss&emc=rss&\\_r=1&](http://www.nytimes.com/2013/07/07/us/in-secret-court-vastly-broadens-powers-of-nsa.html?partner=rss&emc=rss&_r=1&)>.

**“Created by Congress in 1978 as a check against wiretapping abuses by the government, the court meets in a secure, nondescript room in the federal courthouse in Washington. All of the current 11 judges, who serve seven-year terms, were appointed to the special court by Chief Justice John G. Roberts Jr., and 10 of them were nominated to the bench by Republican presidents. Most hail from districts outside the capital and come in rotating shifts to hear surveillance applications; a single judge signs most surveillance orders, which totaled nearly 1,800 last year. None of the requests from the intelligence agencies was denied, according to the court.”**

**Warrant:** The fact there was such backlash from US citizens, proves checks and balances (oversight) works effectively.

Sink, Justin. "Obama: NSA Revelations Show 'oversight Worked'" *The Hill*. N.p., 23 Aug. 2013. Web. 4 Oct. 2013. <<http://thehill.com/video/in-the-news/318423-obama-nsa-revelations-show-oversight-worked>>.

**“Recent revelations that the National Security Agency violated its own surveillance rules on thousands of occasions is evidence ‘all these safeguards, checks, audits,**

**oversight worked,' President Obama said.** In an interview with CNN, Obama expressed confidence nobody at the spy agency would use its surveillance abilities to spy on Americans. **"This latest revelation that was made, what was learned was that NSA had inadvertently, accidentally pulled the emails of some Americans in violation of their own rules because of technical problems that they didn't realize,'** Obama told CNN's 'New Day' in an interview airing Friday. **'They presented those problems to the [Foreign Intelligence Surveillance] court. The court said, 'This isn't going to cut it. You're going to have to improve the safeguards, given these technical problems.' That's exactly what happened. So the point is, is that all these safeguards, checks, audits, oversight worked.'** "

**Analysis:** NSA surveillance has little to no oversight in the status quo. Essentially, that means they can do whatever they want without anyone questioning them. Essentially, this argument makes it dangerous creates a world where you can explain to the judge, with really pretty rhetoric, that NSA can do anything they want and nobody asks. It provides you an opportunity to show how persuasive you are as a competitor.

**Answer:** The pending IOSRA will limit NSA surveillance.

Lewis, Paul. "NSA Reform: How the Key Senate Bill Seeks to Limit Surveillance." *The Guardian*. N.p., 26 Sept. 2013. Web. 04 Oct. 2013.  
<<http://www.theguardian.com/world/2013/sep/26/nsa-reform-senate-bill-surveillance>>.

**"Intelligence Oversight and Surveillance Reform Act is the most comprehensive package of surveillance reforms presented to the Senate so far. It merges competing legislative proposals announced by various senators before the summer recess, and cherry-picks from ideas contained in a dozen other draft bills** that surfaced in both the Senate and House of Representatives, following disclosures by whistleblower Edward Snowden. The legislation is being introduced by three Democratic senators – Ron Wyden, Mark Udall and Richard Blumenthal – and the Republican Rand Paul. **Wyden**

said the bill, which is the first bipartisan Senate effort to clip the wings of the National Security Agency, should be treated as the measure of what constitutes concrete reform to the surveillance system that is not purely cosmetic. The bill is competing with around a dozen others in the House and Senate, but such a situation shows that lawmakers are beginning to come together around a set of proposals that are sure to be debated, amended and significantly rewritten in committee stage, in the weeks ahead.”

**Warrant:** The bill would reform the courts overseeing the collection of data.

Lewis, Paul. "NSA Reform: How the Key Senate Bill Seeks to Limit Surveillance." *The Guardian*. N.p., 26 Sept. 2013. Web. 04 Oct. 2013.  
<<http://www.theguardian.com/world/2013/sep/26/nsa-reform-senate-bill-surveillance>>.

“The controversy over the NSA has led to concerns over the court which ostensibly overseas surveillance conducted by intelligence agencies, issuing warrants to allow them to do their work in a process that critics complain is cloaked in secrecy and has permitted the quiet expansion of surveillance powers never envisaged by Congress. **One frequent complaint regarding the Foreign Intelligence Surveillance Court** (known as the FISA court) **is that the bias is built into the system, with judges, whose rulings are not released, only ever hearing the government's case for warrant applications. The bill seeks to redress that imbalance, inserting some degree of adversarial process into the FISA court's proceedings, but only in significant or precedent-setting cases. To do so, it would appoint a ‘constitutional advocate,’ independent from the executive branch, to serve as a watchdog in important cases – although legal arguments would still be classified, taking place behind closed doors.** The advocate would be appointed by the chief justice, choosing from a shortlist created by the Privacy and Civil Liberties Oversight Board, a body that will be mandated by statute to nominate attorneys who would be ‘zealous and effective advocates in defense of civil liberties.’ ”

**Warrant:** Spying on US citizens is non-unique to US spying programs.

Mercia, Dan. "Obama: NSA Revelations Show 'oversight Worked'" *CNN Political Ticker* RSS. N.p., 23 Aug. 2013. Web. 04 Oct. 2013.  
<<http://politicalticker.blogs.cnn.com/2013/08/23/obama-nsa-revelations-show-oversight-worked/>>.

**“Although Obama said he understands the concerns over the NSA program, he said it was important to remember that other countries ‘have these capabilities.’ ‘These (spying capabilities) aren’t unique to the NSA,’ Obama said. ‘Even as we put in safeguards to make sure that the U.S. government doesn’t abuse these capabilities, we’ve also got to make sure that foreign governments aren’t hacking into our banks, aren’t hacking into our critical infrastructure, are making sure that consumers are protected.’ ”**

**Analysis:** There are checks and balances put in place for NSA domestic surveillance. The card from Sink (quoting Obama) argues the system is working because people reported there was an issue with collecting data and then the courts responded, demanding increased regulations. Also, unless your opponent can prove there are impacts coming off of a lack of oversight, then it doesn’t really matter. Also, consider – what is the threshold or the necessary amount of oversight needed to avoid the harms or impacts of the Con case? (PS – it’s arbitrary. Explain that to the judge).

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**CON – The NSA Infringes Upon Basic Human Rights**

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**Argument:** The NSA violates the rights provided in the fourth amendment.

**Warrant:** The Fourth Amendment of the Constitution.

Bazan, Elizabeth B. "Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information." Congressional Research Service. The Library of Congress, 5 Jan. 2006. Web. 6 Oct. 2013.  
<<http://www.fas.org/sgp/crs/intel/m010506.pdf>>.

**“The Fourth Amendment to the Constitution provides: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”**

**Warrant:** In order for a search to be reasonable under the fourth amendment, it requires both probable cause and a warrant.

Bloom, Robert. "The Constitutional Infirmity of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

**“The Fourth Amendment consists of two clauses joined by the conjunction "and." The first clause is a prohibition against unreasonable searches and seizures, and the second clause deals with the requirements for a warrant. Thus, in order for a search**



**to be reasonable, it generally required probable cause and a warrant specifically describing its scope.”**

**Warrant:** The NSA, authorized by Bush, have conducted surveillance on Americans without using the traditional warrant process.

Bloom, Robert. "The Constitutional Infirmity of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

**“In an effort to achieve this goal, President Bush authorized the NSA to conduct electronic surveillance on hundreds, maybe thousands, of Americans without employing the traditional warrant process or the congressionally created foreign intelligence warrant mechanism codified by FISA-the very act that Congress passed in 1978 after the Watergate Scandal unearthed President Nixon's illicit NSA surveillance.”**

**Warrant:** Government collection and use fall outside the fourth amendment.

Balkin, Jack M. "The Constitution in the National Surveillance State." Minnesota Law Review. Minnesota Law Review, 2008. Web. 6 Oct. 2013.  
<[http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin\\_MLR.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Balkin_MLR.pdf)>.

**“Much government collection and use of personal data now falls outside the Fourth Amendment’s protection—at least as the courts currently construe it.”**

**Impact Warrant:** The NSA eavesdrops on an estimated 500 persons at any time.

Bloom, Robert. "The Constitutional Infirmity of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

**“The New York Times, in the article that broke this issue to the public, estimates that the NSA eavesdrops on an estimated 500 persons in the United States at any given time.”**

**Impact Warrant:** Terrorism must be fought with a conduct reflective of the highest American values.

Bloom, Robert. "The Constitutional Infirmity of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

**“We join with you in the conviction that terrorism must be fought with the utmost vigor, but we also believe we must ensure this fight is conducted in a manner reflective of the highest American values.”**

**Impact Warrant:** In order to overcome the issues of terrorism and fear, we must uphold the ideals that are worth fighting for.

Bloom, Robert. "The Constitutional Infirmity of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship

Repository, 2006. Web. 6 Oct. 2013.

<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

**“The Constitution, of course, is not a suicide pact,' but it does provide the wax and rope to block and bind the passions and fears of the moment. If this nation is to sail past the Sirens' song of terrorism and fear, it must do so with renewed dedication to our first principles and to the liberties and democratic ideals that make our society worth the fight.”**

**Warrant:** Invasions of privacy will lead to decreased public trust.

Heyman, David. "Finding the Enemy Within." Center for Strategic and International Studies. Center for Strategic and International Studies, post 2007. Web. 6 Oct. 2013. <[http://csis.org/images/stories/HomelandSecurity/071022\\_Chap4-FindingTheEnemyWithin.pdf](http://csis.org/images/stories/HomelandSecurity/071022_Chap4-FindingTheEnemyWithin.pdf)>.

**“Unlimited collection would not only be an invasion of privacy, it would be counter to the common expectation of Americans to be free to be left alone. Even the perception of unchecked intelligence diminishes greatly the public’s trust in government. Further, when the public learns through news leaks of unwarranted, potentially unlawful collection, it leaves many asking what else is going on?”**

**Analysis:** In a round, it is a very obvious argument to make that the NSA infringes on privacy rights as outlined by the Bill of Rights. How you impact that, however, is entirely dependent on your case. You could either impact that it is important to keep up these ideals to uphold our American identity or you could show that it will decrease public trust in the government.

**A/2 – The NSA Infringes Upon Basic Human Rights**

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**Answer:** In certain situations, security outweighs the need the ultimate enforcement of rights.

**Warrant:** In certain limited circumstances, neither searches nor seizures are required.

Bloom, Robert. "The Constitutional Infirmary of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

**“The decision in *Knights* built upon earlier holdings that recognized that “[t]he fundamental command of the Fourth Amendment is that searches and seizures be reasonable, and although ‘both the concept of probable cause and the requirement of a warrant bear on the reasonableness of a search.... in certain limited circumstances neither is required.”**

**Warrant:** The ready test for determining reasonableness in search is balancing government interest with personal intrusion.

Bloom, Robert. "The Constitutional Infirmary of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

**“The Court stated that “there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails. On one side of the balance, the Court weighed the governmental interest or need to conduct the particular type of Fourth Amendment activity. On the other side of the balance, the Court looked to the intrusion that a particular search entailed. This balance resulted in the validity of an administrative search adjudged by the reasonableness of its administrative regulations instead of the existence of probable cause.”**

**Warrant:** Administration argues that the prevention of a terrorist attack outweighs the intrusion of privacy.

Bloom, Robert. "The Constitutional Infirmary of Warrantless NSA Surveillance: The Abuse of Presidential Power and the Injury to the Fourth Amendment." William & Mary Bill of Rights Journal. William & Mary Law School Scholarship Repository, 2006. Web. 6 Oct. 2013.  
<<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1135&context=wmborj>>.

**“The administration argues that the surveillance satisfies the Fourth Amendment and its requirement for reasonableness because the balance of the governmental interest in protecting against a terrorist attack outweighs the resulting intrusion on privacy interests.”**

**Impact Warrant:** The NSA weighing the individual liberties of citizens over security was critiqued in the congressional inquiry into the 9/11 attacks.

Gorman, Siobhan. "NSA's Domestic Spying Grows As Agency Sweeps Up Data." The Wall Street Journal. The Wall Street Journal, 10 Mar. 2008. Web. 6 Oct. 2013.  
<<http://online.wsj.com/article/SB120511973377523845.html>>.

**“The 2002 congressional inquiry into the 9/11 attacks criticized the NSA for holding back information, which NSA officials said they were doing to protect the privacy of U.S. citizens. ‘NSA did not want to be perceived as targeting individuals in the United States’ and considered such surveillance the FBI's job, the inquiry concluded.”**

**Analysis:** As concluded by the Supreme Court, it is justifiable in certain scenarios for rights to be infringed upon. The way this is determined is the balancing test of government interest and personal intrusion. If you can establish this framework early in the round, then proving that the government has a vested interest in protecting its citizens would win you the point.

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**CON – NSA Activity Increases Cyber Attacks**

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**Argument:** NSA opens the door for cyber attacks on US companies.

**Warrant:** NSA wants both the data and the technology from Silicon Valley, and gets it by working with huge companies.

Risen, James. “Web’s Reach Binds N.S.A. and Silicon Valley Leaders.” *The New York Times*. N.p., 19 June 2013. Web. 3 Oct. 2013.

<<http://www.nytimes.com/2013/06/20/technology/silicon-valley-and-spy-agency-bound-by-strengthening-web.html?pagewanted=all>>.

**“The disclosure of the spy agency’s program called Prism, which is said to collect the e-mails and other Web activity of foreigners using major Internet companies like Google, Yahoo and Facebook, has prompted the companies to deny that the agency has direct access to their computers, even as they acknowledge complying with secret N.S.A. court orders for specific data. Yet technology experts and former intelligence officials say the convergence between Silicon Valley and the N.S.A. and the rise of data mining — both as an industry and as a crucial intelligence tool — have created a more complex reality. Silicon Valley has what the spy agency wants: vast amounts of private data and the most sophisticated software available to analyze it. The agency in turn is one of Silicon Valley’s largest customers for what is known as data analytics, one of the valley’s fastest-growing markets. To get their hands on the latest software technology to manipulate and take advantage of large volumes of data, United States intelligence agencies invest in Silicon Valley start-ups, award classified contracts and recruit technology experts like Mr. Kelly.”**

**Warrant:** The US spends \$8 billion in Silicon Valley and frequently works with company teams.

Risen, James. "Web's Reach Binds N.S.A. and Silicon Valley Leaders." *The New York Times*. N.p., 19 June 2013. Web. 3 Oct. 2013.  
<<http://www.nytimes.com/2013/06/20/technology/silicon-valley-and-spy-agency-bound-by-strengthening-web.html?pagewanted=all>>.

**"The sums the N.S.A. spends in Silicon Valley are classified, as is the agency's total budget, which independent analysts say is \$8 billion to \$10 billion a year. Despite the companies' assertions that they cooperate with the agency only when legally compelled, current and former industry officials say the companies sometimes secretly put together teams of in-house experts to find ways to cooperate more completely with the N.S.A. and to make their customers' information more accessible to the agency. The companies do so, the officials say, because they want to control the process themselves. They are also under subtle but powerful pressure from the N.S.A. to make access easier."**

**Warrant:** NSA deliberately weakening encryption standards adopted by developers around the world.

Sanchez, Julian. "NSA's War on Global Cybersecurity." *The Cato Institute*. N.p., 6 Sept. 2013. Web. 03 Oct. 2013. <<http://www.cato.org/blog/nsas-war-global-cybersecurity>>.

**"Simultaneously, the N.S.A. has been deliberately weakening the international encryption standards adopted by developers. One goal in the agency's 2013 budget request was to "influence policies, standards and specifications for commercial public key technologies," the most common encryption method. Cryptographers have long suspected that the agency planted vulnerabilities in a standard adopted in 2006 by the National Institute of Standards and Technology and later by the International Organization for Standardization, which has 163 countries as members. Classified N.S.A. memos appear to confirm that the fatal weakness, discovered by two Microsoft cryptographers in 2007, was engineered by the agency. The N.S.A. wrote**



the standard and aggressively pushed it on the international group, privately calling the effort “a challenge in finesse.”

**Warrant:** US has been the leader in cloud computing, but recent revelations about NSA obtaining electronic information is making investors hesitant of US cloud computing, costing us \$22-25 billion.

Casto, Daniel. “How Much Will PRISM Cost the U.S. Cloud Computing Industry? | The Information Technology & Innovation Foundation.” *The Information Technology and Innovation Foundation*. N.p., 5 Aug. 2013. Web. 03 Oct. 2013.  
<<http://www.itif.org/publications/how-much-will-prism-cost-us-cloud-computing-industry>>.

**“The United States has been the leader in providing cloud computing services not just domestically, but also abroad where it dominates every segment of the market. Recent revelations about the extent to which the NSA obtains electronic data from third-parties will likely have an immediate and lasting impact on the competitiveness of the U.S. cloud computing industry if foreign customers decide the risks of storing data with a U.S. company outweigh the benefits. Unless the White House or Congress acts soon, the U.S. cloud computing industry stands to lose \$22 to \$35 billion over the next three years.”**

**Warrant:** The impact extends to the whole tech. sector.

Staten, James. “The Cost Of Prism Will Be Larger Than Itif Projects.” *Forrester Research*. N.p., 14 Aug. 2013. Web. 3 Oct. 2013.  
<[http://blogs.forrester.com/james\\_staten/13-08-14-the\\_cost\\_of\\_prism\\_will\\_be\\_larger\\_than\\_itif\\_projects](http://blogs.forrester.com/james_staten/13-08-14-the_cost_of_prism_will_be_larger_than_itif_projects)>.

**“Earlier this month The Information Technology & Innovation Foundation (ITIF) prediction that the U.S. cloud computing industry stands to lose up to \$35**

**billion by 2016 thanks to the National Security Agency (NSA) PRISM project, leaked to the media in June. We think this estimate is too low and could be as high as \$180 billion or a 25% hit to overall IT service provider revenues in that same timeframe.** That is, if you believe the assumption that government spying is more a concern than the business benefits of going cloud. **Add it all up and you have a net loss for the service provider space of about \$180 billion by 2016 which would be roughly a 25% decline in the overall IT services market by that final year,** using Forrester market estimates. All from the unveiling of a single kangaroo-court action called PRISM.”

**Analysis:** The top part of the argument is pretty simple – the U.S. is increasingly involving itself with the technology sector in Silicon Valley. While this doesn’t sound problematic, they so involved that they can compromise the cyber security of international companies and the US. This not only hurts the tech industry, by scaring away investors, but it also causes millions of dollars of loss to the tech. sector. To outweigh with a PRO case, you need to explain how we haven’t seen the impacts of their contentions yet, but the impact of NSA’s surveillance of companies is CURRENTLY hurting out economy. Then use the numbers in the cards above to weigh impacts.

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**A/2 – NSA Activity Increases Cyber Attacks**

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**Answer:** NSA doesn't harm cyber security

**Warrant:** Non-Unique IT has been moving towards outsourcing for a while.

Staten, James. "THE COST OF PRISM WILL BE LARGER THAN ITIF PROJECTS." *Forrester Research*. N.p., 14 Aug. 2013. Web. 3 Oct. 2013. <[http://blogs.forrester.com/james\\_staten/13-08-14-the\\_cost\\_of\\_prism\\_will\\_be\\_larger\\_than\\_itif\\_projects](http://blogs.forrester.com/james_staten/13-08-14-the_cost_of_prism_will_be_larger_than_itif_projects)>.

**“Prior to today's media-hyped paranoia about government surveillance, corporate IT spending has been trending *toward* outsourcing for many years. Few corporations have no data in the cloud let alone no data with a hosting company, collocation provider or outsourcing firm. Think your firm is the exception? Do a quick travel and expense audit against Evernote, DropBox or similar services. Swear on a Bible that none of your employees have company data sucked up into iCloud. Sign a legal tender that none of your partners are storing your data or data about your company in the cloud or with a service provider.”**

**Warrant:** Banks are asking the NSA for advise on how to improve their systems.

"U.S. Banks Ask NSA for Cybersecurity Help." *The United Press International*. N.p., 11 Jan. 2013. Web. 03 Oct. 2013. <[http://www.upi.com/Science\\_News/Technology/2013/01/11/US-banks-ask-NSA-for-cybersecurity-help/UPI-38141357939979/](http://www.upi.com/Science_News/Technology/2013/01/11/US-banks-ask-NSA-for-cybersecurity-help/UPI-38141357939979/)>.

**“U.S. banks have asked the National Security Agency for help protecting computer systems after a slew of cyberattacks against their websites, officials said. As the sophistication of the attacks has increased, major banks have turned to the NSA for**

**technical assistance to help them analyze their systems and better understand attackers' tactics**, The Washington Post reported Friday. **'If you look at [the government's] actions, they're taking this very seriously,**' one bank official told the Post. "The government is stepping up to the plate," said the official, who asked not to be named because he wasn't authorized to speak for the record."

**Analysis:** Why does it matter if we're hurting our tech industry, if we're protecting out citizens from terrorism and threats to their safety? The first card indicates the tech industry was already declining in the status quo and the second one points out banks (some of which have the most complicated security systems) are looking to the NSA for help designing anti-cyber attacks. Plus, you can turn this by reading either of the first two cards from the CON side, which says the NSA works with these companies, which you can make the analysis, that they would be more knowledgeable about cyber attacks.

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**CON – NSA Policies Harm Transparency**

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**Argument:** The NSA’s lack of transparency allows rights violations to occur and expands executive power.

**Warrant:** Lack of transparency allows unwarranted violations of rights.

Talbot, David. “Bruce Schneier: NSA Spying Is Making Us Less Safe.” *National Review Online*. 23 Sept. 2013. Web. 4 October 2013.

<[http://www.technologyreview.com/news/519336/bruce-schneier-nsa-spying-is-making-us-less-safe/?utm\\_campaign=newsletters&utm\\_source=newsletter-daily-all&utm\\_medium=email&utm\\_content=20130923](http://www.technologyreview.com/news/519336/bruce-schneier-nsa-spying-is-making-us-less-safe/?utm_campaign=newsletters&utm_source=newsletter-daily-all&utm_medium=email&utm_content=20130923)>.

“The NSA’s actions are making us all less safe. They’re not just spying on the bad guys, they’re deliberately weakening Internet security for everyone—including the good guys. It’s sheer folly to believe that only the NSA can exploit the vulnerabilities they create. Additionally, by eavesdropping on all Americans, **they’re building the technical infrastructure for a police state. We’re not there yet, but already we’ve learned that both the DEA and the IRS use NSA surveillance data in prosecutions and then lie about it in court. Power without accountability or oversight is dangerous to society at a very fundamental level.**”

**Warrant:** Congress and the FISA courts can’t check back successfully because of the excess secrecy around the NSA.

Lee, Timothy B.. “Obama says the NSA has had plenty of oversight. Here’s why he’s wrong.” *The Washington Post*. 7 June 2013. Web. 6 October 2013.

<<http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/07/obama-says-the-nsa-has-had-plenty-of-oversight-heres-why-hes-wrong/>>.

“Obama's comments make it sound like the programs are subject to rigorous and continuous oversight. **But the simple fact that Congress is briefed and federal judges are involved doesn't mean either branch is actually able to serve as an effective check. The excessive secrecy surrounding these programs makes that unlikely. Take Congress. When the government has briefed members of Congress on its surveillance activities, it has often been in meetings where "aides were barred and note-taking was prohibited."** It's impossible for Congress to provide effective oversight under those conditions. **Members of Congress rely on staff to help them keep track of legislative details. They need independent experts to advise them on complex technical issues. And they need feedback from the constituents they ultimately represent. But the senators briefed on these programs couldn't speak about them.** Sens. Ron Wyden (D-Ore.) and Mark Udall (D-Colo.) were reduced to spending years trying to hint at the existence of programs they weren't able to actually tell anyone about. Only now can anyone see what it is they were trying to tell us. **Meanwhile, the 2008 FISA Amendments Act cut judges out of their traditional role of reviewing individual surveillance requests. Instead, it asks judges to approve broad categories of surveillance. The law gives judges little leeway to reject proposed surveillance programs, and in any event judges lack the expertise and resources to perform this quasi-legislative oversight role effectively.”**

**Warrant:** The NSA has broken privacy rules multiple times and kept the information hidden from Congress and the courts.

Condon, Stephanie. “NSA abuses contradict Obama and congressional claims of oversight.” *CBS news and the Associated Press*. 16 Aug. 2013. 4 October 2013. <[http://www.cbsnews.com/8301-250\\_162-57598928/nsa-abuses-contradict-obama-and-congressional-claims-of-oversight/?pageNum=2](http://www.cbsnews.com/8301-250_162-57598928/nsa-abuses-contradict-obama-and-congressional-claims-of-oversight/?pageNum=2)>.

**“However, the latest revelation that the NSA violated privacy rules thousands of times, as documented in an internal report -- an internal report withheld from at least one leader in Congress responsible for oversight -- proves the president and**

several others in Washington were wrong. **The NSA broke privacy rules more than 2,700 times within just one year, according to a May 2012 internal NSA report** that was leaked to the Washington Post, along with other secret documents. **"The documents, provided** earlier this summer to The Washington Post by former NSA contractor Edward Snowden, **include a level of detail and analysis that is not routinely shared with Congress or the special court that oversees surveillance,"** the Post wrote, noting that Senate Intelligence Committee Chairwoman Dianne Feinstein, D-Calif., had not seen the internal report before the newspaper asked her staff about it. Some of the violations were a result of human error, some were related to technical challenges and most were unintended, the Post reported. The sheer number of violations, however, will raise concerns, CBS News national security analyst Juan Zarate said on "CBS This Morning." **"The fact is, this more than just a few inadvertent episodes," he said. "It's really a sense from the internal audits -- inside the government -- of the violations and overstepping by the NSA."**

**Warrant:** There're mountains of information that US citizens AND Congress don't know is being collected.

Feinstein, Diane. "Make NSA programs more transparent." *Washington Post*. 30 July. 2013. Web. 4 October 2013. <[http://articles.washingtonpost.com/2013-07-30/opinions/40893423\\_1\\_nsa-analyst-national-security-agency-fisa-court](http://articles.washingtonpost.com/2013-07-30/opinions/40893423_1_nsa-analyst-national-security-agency-fisa-court)>.

"Despite these real threats that our intelligence programs seek to thwart, I intend to work with members of the Senate intelligence and judiciary committees to consider changes to the NSA call-records program in an effort to increase transparency and improve privacy protections. These changes would require that:

- **The number of Americans' phone numbers submitted as queries of the NSA database be made public annually, as well as the number of referrals made to the FBI each year based on those queries;**
- The number of warrants obtained by the FBI — based on probable cause — to collect the content of any call be released annually;

- The number of times in a year that any company is required to provide data pursuant to FISA's business records provision be released;
- **All classified FISA court opinions and reports on U.S. persons targeted for surveillance under FISA be made available in a secure location to every member of Congress;**
- The five-year retention period of phone records be reduced to two or three years;
- The ideological diversity of the FISA court be increased (86 percent of judges appointed to the court by Chief Justice John G. Roberts Jr. have been Republicans and the vast majority were prosecutors, according to media reports); and
- **The FISA court review each query of the database as soon as practicable to determine its propriety under the law.**

**In addition, the congressional intelligence committees should periodically review all intelligence data-collection programs involving Americans** to ensure that the Justice Department guidelines required by Executive Order 12333 are adequate and are followed. The bottom line is that actionable intelligence is the best way to prevent an attack against our country."

**Warrant:** In order for citizens to participate in government, government's must be transparent.

Obama, Barack. "Transparency and Open Government." *White House*. 4 October 2013.

<[http://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment](http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment)>.

**"Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing.**

Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public. Executive departments and agencies should also solicit public feedback to identify information of



greatest use to the public. Government should be participatory. **Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge.** Executive departments and agencies should offer **Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information.** Executive departments and agencies should also solicit public input on how we can **increase and improve opportunities for public participation in Government."**

**Warrant:** Citizen participation is the key to checking back corruption and abuse, and making informed choices; basically it's the key to maintaining a democracy.

"Politics and Government." *Transparency International*. 4 October 2013.

<[http://www.transparency.org/topic/detail/politics\\_and\\_government](http://www.transparency.org/topic/detail/politics_and_government)>.

"Political corruption can feel daunting and remote. So can we really do anything about it? **If we speak out about how we're governed, we can. We need to call on our politicians and public officials to be accountable for their actions. How can we trust them if we don't know what they're doing? We must demand that they put in place regulations which will force them to act openly. Then corruption can't hide.** And our trust in the political process will improve. **When leaders act transparently, showing us clearly what they do, we can make informed choices when we vote.** And we can hold them to account once elected. From grassroots groups to big organisations, civil society has a crucial role to play. We can monitor electoral campaigns and parties' activities. If state resources are abused, we must report it. And if regulations to prevent corruption aren't in place, we must demand them. Rules about politicians' conflicts of interest, for example. Or regulations to stop corporate lobbying and political funding from distorting the democratic process. If companies publish their donations, they can show their contributions aren't intended to win favours. By speaking out, we can show that everyone gains from honest elections and open decision-making. Even politicians. Go back to the problem."

**Analysis:** The argument here is just that when we don't know what the government is doing, then it's impossible for us to check back the government through the democratic process; we can't kick out representatives if we don't know they voted for laws that violate rights, so these rights violations continue to happen.

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**A/2 – NSA Policies Harm Transparency**

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**Answer:** Policies are being reformed in order to introduce more accountability to the NSA.

**Warrant:** Obama is reforming to introduce more transparency to the NSA

Wilson, Scott and Goldfarb, Zachary A.. “Obama announces proposals to reform NSA surveillance.” *Washington Post*. 9 Aug. 2013. Web. 4 October 2013.  
<[http://articles.washingtonpost.com/2013-08-09/politics/41225487\\_1\\_president-obama-news-conference-edward-snowden](http://articles.washingtonpost.com/2013-08-09/politics/41225487_1_president-obama-news-conference-edward-snowden)>.

**“President Obama announced plans Friday to pursue reforms that would open the legal proceedings surrounding the National Security Agency’s surveillance programs to greater scrutiny, the administration’s most concerted response yet to a series of national security disclosures that have raised concerns from Republicans and Democrats on Capitol Hill. At his first full news conference in more than three months, Obama said he intends to work with Congress on proposals that would add an adversarial voice — effectively one advocating privacy rights — to the secret proceedings before the Foreign Intelligence Surveillance Court. Several Democratic senators have proposed such a measure. In addition, Obama said that he intends to work on ways to tighten one provision of the Patriot Act - known as Section 215 - that gives the government broader authority to obtain business phone data records. He announced the creation of a panel of outsiders -- former intelligence officials, civil liberty and privacy advocates, and others — to assess the programs and suggest changes by the end of the year.”**

**Warrant:** The FISA courts are releasing more opinions based on court rulings for the NSA.

Fung, Brian. “The FISA court will release more opinions because of Snowden.”  
*Washington Post*. 13 Sept. 2013. Web. 4 October 2013.

<<http://www.washingtonpost.com/blogs/the-switch/wp/2013/09/13/the-fisa-court-will-release-more-opinions-because-of-snowden/>>.

“Call it the Edward Snowden effect: **Citing the former NSA contractor, a federal judge has ordered the government to declassify more reports from the secret Foreign Intelligence Surveillance Court. In an opinion from the FISC itself, Judge F. Dennis Saylor on Friday told the White House to declassify all the legal opinions relating to Section 215 of the Patriot Act written after May 2011 that aren't already the subject of FOIA litigation. The court ruled that the White House must identify the opinions in question by Oct. 4.** "The unauthorized disclosure of in June 2013 of a Section 215 order, and government statements in response to that disclosure, have engendered considerable public interest and debate about Section 215," wrote Saylor. "Publication of FISC opinions relating to this opinion would contribute to an informed debate."

**Warrant:** Congress had a lot of opportunities to check the program.

Stein, Sam. “NSA Surveillance Program Oversight: White House, Congress Point Fingers At Each Other.” *Huffington Post*. 7 June. 2013. Web. 6 October 2013. <[http://www.huffingtonpost.com/2013/06/07/nsa-surveillance-program-oversight\\_n\\_3405716.html](http://www.huffingtonpost.com/2013/06/07/nsa-surveillance-program-oversight_n_3405716.html)>.

“The senior administration official said **lawmakers in Congress had many chances to discuss the Patriot Act and its provisions with administration officials from May 2009 to May 2011. Those sessions included six hearings, two briefings (large settings with question-and-answer sessions), and two meetings. They were held for Judiciary and Intelligence committee members in the House and the Senate.** On three occasions, the audience was expanded, according to the administration official. **In May 2011, administration officials held a gathering for the House Republican Conference, and a separate one for the House Democratic Caucus. In February 2011, officials invited all senators for a briefing.** All of the sessions dealt

predominantly with the reauthorization of the Patriot Act. It's unclear if discussion touched on the NSA data-mining operations. On March 15, 2011, a classified briefing was held to discuss a Patriot Act amendment that had been offered by Sen. Dick Durbin (D-Ill.). The Illinois Democrat was pushing a provision that would have required the government to describe “with particularity” the target of roving wiretaps. At the meeting for senators in February 2011, held in the vice president's office off the Senate floor, **lawmakers were offered the opportunity to discuss Section 215 of the Patriot Act, which provides the legal basis for the NSA data mining.** Attendees included Director of National Intelligence James Clapper, FBI Director Robert Mueller, and National Security Agency Director Keith Alexander. Officials who briefed lawmakers at the other sessions included Sean Joyce, deputy FBI director; Todd Hinnen, head of the National Security Division of the Department of Justice; and David Kris, assistant attorney general for national security. **“The Department of Justice has taken multiple actions to inform members of these authorities, including providing in-person briefings and classified white papers,”** said the senior administration official. “The classified white papers were provided to the Intelligence Committees, along with a formal request that the white papers be made available for review by all members in the respective committee spaces.” Those requests resulted in at least two additional oversight opportunities. On Feb. 23, 2010, and Feb. 8, 2011, the chair and ranking member of the Senate Intelligence Committee, Sens. Dianne Feinstein (D-Calif.) and Saxby Chambliss (R-Ga.), sent letters advising their colleagues of a chance to review “an updated classified report” on Patriot Act surveillance programs, including those that touched on data collection.

**Warrant:** There is a backlash among companies such as Google and Microsoft who are litigating to become more transparent about the government’s surveillance.

Rosenblatt, Seth. “Microsoft, Google to sue over FISA gag order.” *CNET*. 30 Aug. 2013. Web. 4 October 2013. < [http://news.cnet.com/8301-13578\\_3-57600849-38/microsoft-google-to-sue-over-fisa-gag-order/](http://news.cnet.com/8301-13578_3-57600849-38/microsoft-google-to-sue-over-fisa-gag-order/)>.

“Stonewalling by the Department of Justice has led Google and Microsoft to decide to file a lawsuit so that they can publicly discuss Foreign Intelligence Surveillance Court-approved surveillance orders. **Microsoft general counsel Brad Smith announced Friday that the company, in collaboration with Google, would sue the government** despite its statement on Thursday that it would publish some surveillance request information annually. **Google and Microsoft are requesting the ability to publish "aggregate information" about FISA court orders directed at the companies in the hopes of being more transparent to their customers,** the companies have said. **Google originally filed the motion to claim a First Amendment right to publish information such as how many requests it has received from under the Foreign Intelligence Surveillance Act. Section 702 of the act was amended in 2008 to allow the government to declare even the number of requests issued under the act subject to gag orders.** Before the National Security Agency document leaks from Edward Snowden, the FISA orders had been declared so secret that Google, Microsoft, and other companies served with them were barred from acknowledging in public that they had received the requests.”

**Warrant:** Companies have been revealing on the content of the data that’s been collected.

Green, Chloe. “US tech giants demand end to PRISM gagging order.” *Information Age* 12 June. 2013. Web. 4 October 2013. <<http://www.information-age.com/technology/security/123457123/us-tech-giants-demand-end-to-prism-gagging-order>>.

**“Google, Twitter, Facebook and Microsoft have called on the US government to lift a gagging order that prevents them from revealing what information they share with the country's National Security Agency (NSA).** The Internet giants made the demand amid accusations that they are complicit in warrantless surveillance of the Internet by the US government. **Criticism is mounting following the revelation last week of PRISM, an NSA surveillance programme that allows the agency to access**

**some data from the companies. David Drummond, Google's chief legal officer, wrote an open letter yesterday to attorney general Eric Holder and FBI director Robert Mueller, asking for permission publish details of orders it has received under the Foreign Intelligence Surveillance Act, in order to clear up speculation."**

**Warrant:** The fact that we know that there are harms means oversight is working; no system is ever flawless.

Sink, Justin. "Obama: NSA revelations show 'oversight worked.'" *The Hill*. 23 Aug. 2013. Web. 6 October 2013. <<http://thehill.com/video/in-the-news/318423-obama-nsa-revelations-show-oversight-worked>>.

**"Recent revelations that the National Security Agency violated its own surveillance rules on thousands of occasions is evidence "all these safeguards, checks, audits, oversight worked,"** President Obama said. In an interview with CNN, Obama expressed confidence nobody at the spy agency would use its surveillance abilities to spy on Americans. **"This latest revelation that was made, what was learned was that NSA had inadvertently, accidentally pulled the emails of some Americans in violation of their own rules because of technical problems that they didn't realize,"** Obama told CNN's "New Day" in an interview airing Friday. **"They presented those problems to the [Foreign Intelligence Surveillance] court. The court said, 'This isn't going to cut it. You're going to have to improve the safeguards, given these technical problems.' That's exactly what happened. So the point is, is that all these safeguards, checks, audits, oversight worked."**

**Warrant:** The government is justified in keeping secrets for national security.

"Keeping Secrets: Congress, the Courts, and National Security Information." *Harvard Law Review*. 103.4 (1996): 906-925. <<http://www.jstor.org/stable/1341480>>.

**“Secrecy is both necessary and antithetical to the foreign policy processes of democratic government: necessary, because foreign affairs may involve sensitive strategic relationships that cannot withstand the often destructive inquiry of a divisive political arena; yet antithetical, because “foreign policy ultimately turns on the most fundamental values in our society,”<sup>1</sup> values best expounded through robust civic discussion, which secrecy inhibits and impairs. Historically, the executive branch alone has decided how to balance the need for secrecy against the need for openness in foreign affairs. Through the operation of a national security classification system, Presidents have shielded government information from public scrutiny by asserting that its release would significantly damage national security. Driven by separation of powers considerations, both Congress and the judiciary have recognized the legitimacy of this executive privilege, and generally have declined to challenge either the breadth or the scope of executive classification decisions. Indeed, Congress has exempted “properly classified” information from Free-dom of Information Act<sup>2</sup> (FOIA) request, and has instructed courts involved in FOIA proceedings to view deferentially executive branch assertions that classifications are legitimate.<sup>3</sup> Similarly, the judiciary has long asserted that it “has neither aptitude, facilities nor responsibility”<sup>4</sup> to inquire into the executive's management of foreign affairs.”**

**Analysis:** The argument here is that oversight already existed, but the government is improving it anyways, and companies like Google and Microsoft are litigating to make it even more open than before. Regardless, if you lose most of these arguments, you could still argue that secrecy is necessary in times of war; if we disclose all methods to the public, that means that people who might want to harm the US will also know what we’re doing to stop them, and might be able to get around it.



### **CON – NSA Surveillance Harms Our International Standing**

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**Warrant:** US spied on foreign officials and individuals through domestic means.

Levs, Josh and Shoichet, Catherine E.. “Europe furious, 'shocked' by report of U.S. spying.” *CNN*. 1 July. 2013. Web. 5 October 2013.

<<http://www.cnn.com/2013/06/30/world/europe/eu-nsa/index.html>>.

“Citing information from secret documents obtained by Snowden, the German news magazine *Der Spiegel* reported Sunday that several U.S. spying operations targeted European Union leaders. *Der Spiegel* said it had "in part seen" **documents from Snowden that describe how the National Security Agency bugged EU officials' Washington and New York offices** and conducted an "electronic eavesdropping operation" that tapped into a EU building in Brussels, Belgium. **The magazine's report also says that NSA spying has targeted telephone and Internet connection data in Germany more than any other European nation. An average of up to 20 million phone connections and 10 million Internet data connections are surveyed daily, *Der Spiegel* said, noting that the intensity of surveillance puts the U.S. ally on par with China, Iraq and Saudi Arabia.**”

**Warrant:** Many internet servers are located in the US and we spy through them; international spying is done through domestic means.

Brooks, Bradley. “Rousseff wants web servers to be housed in Brazil.” *Associated Press*. 12 Sep. 2013. Web. 5 October 2013. <<http://bigstory.ap.org/article/rousseff-wants-web-servers-be-housed-brazil>>.

**“Brazilian Communications Minister Paulo Silva has called for any companies working with Brazilian clients to maintain servers in the nation, which officials say would help prevent spying by foreign entities. "The level of concentration of American**

**Internet companies is colossal,"** Silva said shortly after the first reports that the NSA program was focusing on Brazil. **"Beyond that, as all the data centers are (now) located within the United States, one is always communicating with U.S. servers."** Silva insisted that companies like Facebook, Google and others plant their servers in Brazil, a nation of 200 million people with a voracious social media appetite. Facebook's director in Brazil, Leonardo Tristao, told the Globo television this week that Brazil ranks only behind the U.S. and India in terms of how many users are on the social network, with 76 million Brazilians maintaining a Facebook account."

**Warrant:** International monitoring was done through domestic infrastructure; still resolutional.

Winter, Brian. "Brazil's Rousseff targets internet companies after NSA spying." *Reuters News*. Sep. 2013. Web. 1 October 2013.  
<<http://www.reuters.com/article/2013/09/12/net-us-usa-security-snowden-brazil-idUSBRE98B14R20130912>>.

**"Angered by reports that the U.S. government spied on her and other Brazilians, President Dilma Rousseff is pushing new legislation that would seek to force Google, Facebook and other internet companies to store locally gathered data inside Brazil. The requirement would be difficult to execute, technology experts say, given high costs and the global nature of the Internet. Still, Rousseff's initiative is one of the most tangible signs of a backlash following revelations that the U.S. National Security Agency monitored emails, phone calls and other communications abroad. The legislation, which is being written by a lawmaker in Rousseff's left-wing Workers' Party and is scheduled to be completed next week, would force foreign-based internet companies to maintain data centers inside Brazil that would then be governed by Brazilian privacy laws, officials said. Internet companies operating in Brazil are currently free to put data centers wherever they like. Facebook Inc, for example, stores its global data in the United States and a new complex in Sweden. Rousseff believes that the change would help shield Brazilians from further U.S. prying into their activities, and she is considering urging other countries to take similar**

**measures when she speaks at the United Nations General Assembly later this month, a senior Brazilian official told Reuters. "**

**Warrant:** Relations with Brazil have been harmed; could undermine energy trading.

Onis, Juan D. "NSA Spying Leaks Damage US-Brazil Relations." *World Affairs Journal*. 5 September. 2013. Web. 1 October 2013.

<<http://www.worldaffairsjournal.org/blog/juan-de-onis/nsa-spying-leaks-damage-us-brazil-relations>>.

**"US diplomatic relations with Brazil have suffered a very damaging setback from the release of secret documents showing the extent of communications monitoring by the National Security Administration in this country, historically Washington's main ally in South America. The revelation that US monitors tracked voice and text messages between President Dilma Rousseff and her ministers, as well as sensitive commercial communications involving oil fields and foreign trade, infuriated the Brazilian government,** which is demanding clear explanations and apologies from the Obama administration. At risk in this diplomatic row is an official trip by Rousseff to the **United States in October that has been in preparation for two years as an opportunity for Washington to raise political collaboration with this key emerging market.** The revelation of the extensive NSA monitoring came Sunday night on TV Globo, Brazil's major network. The report said the violation by NSA of government communications also took place in Mexico, another close US ally, where President Enrique Peña Nieto's private exchanges were tracked. Released by the American lawyer-journalist and Guardian columnist Glenn Greenwald, the materials originated with Edward Snowden, who stole them while working as an electronic technician with security clearance at the NSA. Snowden is now in Russia, where authorities granted him one-year asylum in August, temporarily forestalling his extradition to the United States (see previous post on Snowden here). Greenwald lives in Rio de Janeiro with his Brazilian partner, David Michael Miranda, who was held recently at London's Heathrow Airport, where authorities confiscated computer records from him. He was believed to be

a courier who maintains contact between Greenwald and associates in Europe, who are active with WikiLeaks. **The timing of this latest release is curious, as it could potentially sabotage President Rousseff's official visit, touted as an opportunity for the Obama administration to modernize and expand relations with Brazil, now among the ten largest economies in the world. Secretary of State John Kerry visited Brazil in July, and the two countries have engaged in high-level discussions on US energy cooperation to develop fracking for natural gas deposits in Brazil and an agreement to support technology innovation that will modernize industry."**

**Warrant:** There's wide dissent in the EU.

Schmitz, Gregor-Peter. "SWIFT Suspension? EU Parliament Furious about NSA Bank Spying." *Der Spiegel*. 18 September. 2013. Web. 3 October 2013.  
<<http://www.spiegel.de/international/europe/nsa-spying-european-parliamentarians-call-for-swift-suspension-a-922920.html>>.

**"The recent revelations regarding the degree to which the US intelligence agency NSA monitors bank data in the European Union has infuriated many in Europe. "Now that we know what we have long been suspecting, we have to protest loudly and clearly," Jan Philipp Albrecht, a legal expert for the Green Party in the European Parliament, told SPIEGEL ONLINE. He is demanding a suspension of the SWIFT agreement, which governs the transfer of some bank data from the EU to anti-terror authorities in the United States. On Monday, SPIEGEL reported that the NSA monitors a significant share of international money transfers, including bank and credit card transactions. The information comes from documents in the possession of whistleblower Edward Snowden that SPIEGEL has been able to see. "Follow the Money" is the name of the NSA branch that handles the surveillance. Information obtained by "Follow the Money" then flows into a financial database known as Tracfin. In 2011, Tracfin had 180 million datasets -- 84 percent of which are comprised of credit card data. But data from the SWIFT network, headquartered in Brussels, also ends up on Tracfin. SWIFT, which handles international transfers among thousands of banks, is identified by**

the NSA as a "target" according to the Snowden documents. They also show that the NSA monitors SWIFT on several different levels, with the NSA department for "tailored access operations" also being involved. Among other methods, the documents note that the NSA has the ability to read "SWIFT printer traffic from numerous banks."

**Warrant:** European Union officials are outraged at the leaks.

Levs, Josh and Shoichet, Catherine E.. "Europe furious, 'shocked' by report of U.S. spying." *CNN*. 1 July. 2013. Web. 5 October 2013.  
<<http://www.cnn.com/2013/06/30/world/europe/eu-nsa/index.html>>.

**"European officials reacted with fury Sunday to a report that the U.S. National Security Agency spied on EU offices. The European Union warned that if the report is accurate, it will have tremendous repercussions. "I am deeply worried and shocked about the allegations," European Parliament President Martin Schulz said in a statement. "If the allegations prove to be true, it would be an extremely serious matter which will have a severe impact on EU-US relations. On behalf of the European Parliament, I demand full clarification and require further information speedily from the U.S. authorities with regard to these allegations." German Justice Minister Sabine Leutheusser-Schnarrenberger "said if the accusations were true, it was reminiscent of the Cold War," ministry spokesman Anders Mertzlufft said, adding that the minister "has asked for an immediate explanation from the United States." French Foreign Minister Laurent Fabius called for a swift explanation from American authorities. "These acts, if they are confirmed, would be absolutely unacceptable," he said in a statement. The outrage from European officials over the weekend was the latest fallout since Edward Snowden, a former National Security Agency computer contractor, started spilling details of U.S. surveillance programs to reporters earlier this month."**

**Warrant:** Germany is pushing to create it's own internet infrastructure.

“Germany to Build EU IT Sector in Response to NSA.” *Wall Street Journal*. 15 Aug. 2013. Web. 5 October 2013.  
<<http://blogs.wsj.com/riskandcompliance/2013/08/15/germany-to-build-eu-it-sector-in-response-to-nsa/>>.

**“The German government said Wednesday that it plans to build up the European IT sector to provide stronger alternatives to American companies that are subject to surveillance by the U.S. National Security Agency.** It is the second time in a week that Germans have moved to protect themselves against the perceived privacy threat posed by the U.S. If U.S. companies don’t respond, they could wind up paying a permanent commercial price for the NSA leaks. “We need a strong European information technology industry which can offer alternatives,” Economy Minister Philipp Roesler said. His proposals might include improving the security of cloud computing or improving the business relationships of startups and large companies, according to Reuters. **The controversy has been building ever since June, when leaker Edward Snowden revealed that the NSA was tracking user data on the servers of Google Inc., Facebook Inc., Microsoft Corp.’s Skype and other Internet services.** Earlier this week, Deutsche Telekom AG announced that email traffic among leading German Internet companies would remain entirely on German servers.”

**Warrant:** US violating International Law.

Borger, Jullian. “Brazilian president: US surveillance a 'breach of international law'.” *The Guardian*. 24 September. 2013. Web. 3 October 2013.  
<<http://www.theguardian.com/world/2013/sep/24/brazil-president-un-speech-nsa-surveillance>>.

“Brazil's president, Dilma Rousseff, has launched a blistering attack on US espionage at the UN general assembly, accusing the NSA of violating international law by its indiscriminate collection of personal information of Brazilian citizens and economic espionage targeted on the country's strategic industries. Rousseff's angry speech was a

direct challenge to President Barack Obama, who was waiting in the wings to deliver his own address to the UN general assembly, and represented the most serious diplomatic fallout to date from the revelations by former NSA contractor Edward Snowden. Rouseff had already put off a planned visit to Washington in protest at US spying, after NSA documents leaked by Snowden revealed that the US electronic eavesdropping agency had monitored the Brazilian president's phone calls, as well as Brazilian embassies and spied on the state oil corporation, Petrobras. **"Personal data of citizens was intercepted indiscriminately. Corporate information – often of high economic and even strategic value – was at the centre of espionage activity." Also, Brazilian diplomatic missions, among them the permanent mission to the UN and the office of the president of the republic itself, had their communications intercepted,"** Rouseff said, in a global rallying cry against what she portrayed as the overweening power of the US security apparatus. **"Tampering in such a manner in the affairs of other countries is a breach of international law and is an affront of the principles that must guide the relations among them, especially among friendly nations. A sovereign nation can never establish itself to the detriment of another sovereign nation. The right to safety of citizens of one country can never be guaranteed by violating fundamental human rights of citizens of another country."**

**Warrant:** International backlash is undermining communications with Russia and garnering international support for Syria.

Grier, Peter. "Are Edward Snowden NSA leaks messing up US foreign relations?" *CS Monitor*. 3 September. 2013. Web. 3 October 2013.  
<<http://www.csmonitor.com/USA/DC-Decoder/Decoder-Wire/2013/0903/Are-Edward-Snowden-NSA-leaks-messing-up-US-foreign-relations>>.

"Last week, the British government asked the Times to destroy documents related to the operations of the NSA and the British eavesdropping agency Government Communications Headquarters, according to Reuters. The US paper did not reply to the request. The US intelligence community may still be unable to determine exactly how

much classified information Snowden has, meaning US officials have little idea when Snowden's leaks might end. NBC News reported last week that the British government has told a court hearing that David Miranda, the partner of journalist and Snowden collaborator Glenn Greenwald, had 58,000 classified documents in his possession when he was detained and searched at London's Heathrow Airport on Aug. 18. Mr. Greenwald has previously said that Snowden downloaded about 20,000 documents. **The furor in Brazil over eavesdropping also shows that Snowden-provided NSA revelations will continue to affect US international relations for some time to come, even as the US is seeking international support for a possible intervention in Syria. President Obama's upcoming trip to Russia for an economy-focused Group of 20 summit has already been scrambled. Mr. Obama called off a scheduled one-on-one with Russia's Vladimir Putin after Snowden obtained temporary asylum in Russia. European leaders upset about NSA activities will surely give Obama an earful."**

**Warrant:** Fears of internet security justify authoritarian practices and moving infrastructure out of the US.

Deibert, Ronald. "Why NSA spying scares the world." *CNN*. 12 June. 2013. Web. 4 October 2013. <<http://www.cnn.com/2013/06/12/opinion/deibert-nsa-surveillance/>>.

**"The revelations that have emerged will undoubtedly trigger a reaction abroad as policymakers and ordinary users realize the huge disadvantages of their dependence on U.S.-controlled networks in social media, cloud computing, and telecommunications, and of the formidable resources that are deployed by U.S. national security agencies to mine and monitor those networks. For example, in 2012, Norwegian lawmakers debated a ban on the use by public officials of Google's and Microsoft's cloud computing services. Although shelved temporarily, this type of debate will almost certainly be resurrected and spread throughout Europe and other regions as the full scope of U.S.-based "foreign directed" wiretapping and metadata collection sinks in. Already we can see regional traffic to the United States**



from Asia, Africa and even Latin America gradually declining, a trend that is almost certainly going to accelerate as those regions ramp up regional network exchange points and local services to minimize dependence on networks under U.S. control. **Many of the countries in the Southern Hemisphere are failed or fragile states; many of them are authoritarian or autocratic regimes. No doubt the elites in those regimes will use the excuse of security to adopt more stringent state controls over the Internet in their jurisdictions and support local versions of popular social media companies over which they can exact their own nationalized controls** -- a trend that began prior to the NSA revelations but which now has additional rhetorical support. In the age of Big Data, the revelations about NSA's intelligence-gathering programs touched many nerves. The issue of surveillance won't go away, and Americans will need to figure out the appropriate safeguards for liberty in their democracy. It's an important debate, but one that doesn't include us "foreigners" that now make up the vast majority of the Internet users. Americans would do well to consider the international implications of their domestic policies before they come home to bite them."

**Analysis:** The most important part of this argument is winning the fact that the spying of international allies happened through domestic infrastructure in order to make sure the argument is topical. At that point, the links are simple, but when you go to describe the impact, you need to make sure the implications are clear. Describe the fact that when internet infrastructure is out of US control, it opens the door for abuses against US citizens, and that our own practices set up the precedent for this. Just take the arguments to their logical conclusion.

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**A/2 – NSA Surveillance Harms Our International Standing**

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**Warrant:** Obama is using diplomatic dialogue with Brazil, and has future meetings planned.

Holland, Steve. "Obama: U.S. will probe reported NSA spying on Brazil, Mexico."

*Reuters*. 6 Sep. 2013. Web. 5 October 2013.

<<http://www.reuters.com/article/2013/09/06/us-usa-security-snowden-brazil-idUSBRE9850F720130906>>.

**"Obama acknowledged that the U.S. government needed to "step back and review what it is that we're doing" and do a cost-benefit analysis of how useful the information was given legitimate concerns around privacy and civil liberties. "It's important for us, on the front end, to say, all right, are we actually going to get useful information here. And if not, if it's not that important, should we be more constrained in how we use certain technical capabilities," he said. Rouseff is due to make a formal state visit to Washington on October 23 to meet U.S. President Barack Obama and discuss a possible \$4 billion jet-fighter deal, cooperation on oil and biofuels technology, as well as other commercial agreements."**

**Warrant:** We were justified in spying on Brazil because they oppose our interests.

Helaman, Christopher. "Of Course The NSA Should Be Spying On Petrobras." *Forbes*. 9

Sept. 2013. Web. 5 October 2013.

<<http://www.forbes.com/sites/christopherhelman/2013/09/09/of-course-the-nsa-should-be-spying-on-petrobras/>>.

Aren't you just shocked, shocked that the National Security Agency has been spying on Brazilian oil giant Petrobras? I'm not. In fact **it would be more shocking if the NSA weren't gathering every fact it could on Brazil and Petrobras, a bloated, state-controlled behemoth reportedly rife with corruption** to which the United States

loaned \$2 billion in 2009. **The company is Brazil's biggest. Brazil relies on it to supply low-cost, subsidized fuel for its growing economy,** even though that subsidy policy has forced the company to eat \$8 billion a year in foregone income and sell assets and bonds to make ends meet. **Efforts to rein in those subsidies to limit refining losses were met with riots this summer. Meanwhile, the Brazilian real has been falling against the U.S. dollar, dramatically pushing up Petrobras' costs of servicing its \$75 billion in mostly dollar-denominated debt — more than any other oil company.** And in spite of amazing oil finds, Petrobras has seen its oil production decline, not grow, in the past year. **A weakened Petrobras means a weakened Brazil, which means a less stable South America. Shouldn't this be directly in the NSA wheelhouse?** Recall that before Rousseff became president she served as Brazil's minister of energy from 2002 to 2005, then taking over as chief of staff to Lula. Her predecessor in that role resigned after a corruption scandal. She continued as Lula's chief of staff until running for president. Once she became president Rousseff appointed Maria das Gracas Foster as the new CEO of Petrobras. Foster had previously worked for Rousseff at the energy ministry. This is all to say that what goes on at Petrobras is part and parcel with the Rousseff administration. The NSA spying on Petrobras is no different from the NSA spying on the Brazilian government. And if you're surprised and disturbed that the U.S. government spies on other governments then you just need to wake up. Why would the U.S. want to spy on Brazil? Well **Brazil has over the years pursued close relationships with key U.S. rivals like Iran, Venezuela and Cuba. Under President Lula, Brazil in 2010 voted against U.N. sanctions on Iran. According to this report by the Congressional Research Service: In 2010 and 2011, for example, Brazil used its temporary seat on the U.N. Security Council to advocate engagement with internationally isolated regimes like Iran, Libya, and Syria, rather than sanctions,** which it views as a prelude to armed conflict. **Some analysts and policymakers assert that Brazil's increasing global prominence and involvement on an array of issues will inevitably lead to disputes with the United States** and that managing those disputes in a transparent and respectful manner will be crucial to maintaining friendly relations moving forward.

**Warrant:** Brazil has too much to lose to have any major long term harms.

Kurczy, Stephen. “Will NSA spying push Brazil toward 'anti-imperialist' neighbors? (+video).” 18 Sept. 2013. Web. 5 October 2013.  
<<http://www.csmonitor.com/World/Americas/2013/0918/Will-NSA-spying-push-Brazil-toward-anti-imperialist-neighbors-video>>.

“Some expect relations to normalize in the medium-term, without any major repercussions. **“The economic interests of both sides are above the ‘crisis’ in progress,”** says André César, a political analyst at Prospective Strategic Consultancy in Brasília. **If not, Brazil’s economy may have more to lose than the US, Mr. Izurieta says, citing weak growth indicators in both Brazil and its trade partners Europe and China. “Given Brazil's waning economy, and the US's growing economy, Brazil has more to gain if this impasse is overcome as soon as possible,”** Izurieta says.”

**Warrant:** Brazil will continue diplomacy with the US.

Kurczy, Stephen. “Will NSA spying push Brazil toward 'anti-imperialist' neighbors? (+video).” 18 Sept. 2013. Web. 5 October 2013.  
<<http://www.csmonitor.com/World/Americas/2013/0918/Will-NSA-spying-push-Brazil-toward-anti-imperialist-neighbors-video>>.

**“Rousseff’s visit to Washington is still expected to happen, eventually. The careful timing and phrasing of yesterday’s press releases — and use of the word “postponed” instead of “canceled” – are reason to believe both leaders seek to contain the fallout and will reschedule the visit in coming months, analysts agree. Rousseff’s office said in its press release that once the allegations are settled the state visit “will take place as soon as possible.” The White House said Obama still welcomed Rousseff “at a date to be mutually agreed.”** Castro Neves also sees relations mending relatively quickly – unless Globo TV has more to reveal from Snowden about the US spying program. “In the near-term we’ll see heightened tensions

but I don't see relations derailing altogether, barring new information surfacing," he says."

**Warrant:** None of Europe has had significant fallout as a result of the spying.

Paramaguru, Kharunya. "Three Months After Snowden's NSA Revelations, Europe Has Moved On." *Time*. 27 Sept. 2013. Web. 5 October 2013.

<<http://world.time.com/2013/09/27/three-months-after-snowdens-nsa-revelations-europe-has-moved-on/>>.

**"And in some parts of the world, responses beyond the immediate surprise caused by the revelations have been particularly muted, with some British and French politicians suggesting that there was nothing in the leaks to cause the general public any concern.** Some politicians, such as Conservative Member of Parliament David Davis, questioned if there was adequate oversight of intelligence operations. But **in general, Europeans have shrugged and moved on.** Documents leaked by Snowden revealed that in Germany the nation's intelligence agencies were working closely with the NSA on allowing the Americans to monitor Internet traffic, e-mails and telephone calls of German citizens. The German foreign intelligence agency, the BND, falls directly under the Chancellor's office, but Chancellor Angela Merkel has denied any knowledge of the arrangement. Was there national outrage at the collusion, in a country still highly sensitive to issues of surveillance and state-control? On the contrary, **although Merkel faced protests about the NSA leaks during her recent re-election campaign she won a larger share of the vote than she had in her previous two victories.** In Britain, where one of its three intelligence bodies, the Government Communications Headquarters (GCHQ), has allegedly been running what Snowden called "the largest program of suspicion-less surveillance in human history" which aims to collect all online and telephone traffic, the debate has been quieter still. This is despite the outrage expressed by free speech groups and high-profile writers such as Stephen Fry, who recently lent his name to a letter addressed to European leaders to take a stand against spying by U.S. and British intelligence agencies. **"It's astonishing to see how many Britons blindly and**

**uncritically trust the work of their intelligence service,” writes journalist Christoph Scheuermann in a commentary for the German paper, Der Spiegel.”**

**Analysis:** Simply said, there’s really no fallout from our actions because we are too important as a global power to cut off ties with or seriously harm relations with, and our actions aren’t terrible; it’s not unexpected that a country is going to spy on other countries. The negative harms are ending quickly, and relations are heading back towards how they were in the past.

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**CON – NSA Surveillance Has a Chilling Effect on Speech**

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**Argument:** NSA surveillance undermines free speech because of the fear of prosecution.

**Warrant:** The government is indiscriminately collecting massive amounts of information.

Greenwald, Glen. "NSA collecting phone records of millions of Verizon customers daily." *The Guardian*. June. 2013. Web. 1 October 2013.

<<http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>>.

**“The National Security Agency is currently collecting the telephone records of millions of US customers of Verizon**, one of America's largest telecoms providers, under a top secret court order issued in April. The order, a copy of which has been obtained by the Guardian, requires Verizon on an "ongoing, daily basis" to give the NSA information on all telephone calls in its systems, both within the US and between the US and other countries. **The document shows for the first time that under the Obama administration the communication records of millions of US citizens are being collected indiscriminately and in bulk – regardless of whether they are suspected of any wrongdoing.** The secret Foreign Intelligence Surveillance Court (Fisa) granted the order to the FBI on April 25, giving the government unlimited authority to obtain the data for a specified three-month period ending on July 19. **Under the terms of the blanket order, the numbers of both parties on a call are handed over, as is location data, call duration, unique identifiers, and the time and duration of all calls.** The contents of the conversation itself are not covered. The disclosure is likely to reignite longstanding debates in the US over the proper extent of the government's domestic spying powers. Under the Bush administration, officials in security agencies had disclosed to reporters the large-scale collection of call records data by the NSA, but this is the first time significant and top-secret documents have revealed the continuation of the practice on a

massive scale under President Obama. **The unlimited nature of the records being handed over to the NSA is extremely unusual.**

**Warrant:** NSA surveillance decreased trust in the government.

Greenwald, Glen. "Major opinion shifts, in the US and Congress, on NSA surveillance and privacy." *The Guardian*. July. 2013. Web. 1 October 2013.

<<http://www.theguardian.com/commentisfree/2013/jul/29/poll-nsa-surveillance-privacy-pew>>.

"Numerous polls taken since our reporting on previously secret NSA activities first began have strongly suggested major public opinion shifts in how NSA surveillance and privacy are viewed. But a new comprehensive poll released over the weekend weekend by Pew Research provides the most compelling evidence yet of how stark the shift is. Among other things, **Pew finds that "a majority of Americans – 56% – say that federal courts fail to provide adequate limits on the telephone and internet data the government is collecting as part of its anti-terrorism efforts." And "an even larger percentage (70%) believes that the government uses this data for purposes other than investigating terrorism." Moreover, "63% think the government is also gathering information about the content of communications."** That demonstrates a decisive rejection of the US government's three primary defenses of its secret programs: there is adequate oversight; we're not listening to the content of communication; and the spying is only used to Keep You Safe™. But the most striking finding is this one: **"Overall, 47% say their greater concern about government anti-terrorism policies is that they have gone too far in restricting the average person's civil liberties, while 35% say they are more concerned that policies have not gone far enough to protect the country. *This is the first time in Pew Research polling that more have expressed concern over civil liberties than protection from terrorism since the question was first asked in 2004.*"** For anyone who spent the post-9/11 years defending core liberties against assaults relentlessly perpetrated in the name of terrorism, polling data like that is nothing short of shocking."



**Warrant:** The chilling effect of surveillance prevents the exercise of individual rights, and allows the government to coerce individuals.

Richards, Neil M. "The Dangers of Surveillance." *Harvard Law Review*. 2012. Web. 1 October 2013.

<<http://www.harvardlawreview.org/symposium/papers2012/richards.pdf>>.

**"Surveillance is harmful because it can chill the exercise of our civil liberties, and because it gives the watcher power over the watched.** In terms of civil liberties, consider surveillance of people when they are thinking, reading, and communicating with others in order to make up their minds about their political and social beliefs. Such **intellectual surveillance is particularly dangerous because it can cause people not to experiment with new, controversial, or deviant ideas.** To protect our intellectual freedom to think without state oversight or interference, we need what I have elsewhere called "intellectual privacy." **The second special harm that surveillance poses is that it affects the power dynamic between the watcher and the watched. This creates the risk of a variety of harms, such discrimination, coercion, or the threat of selective enforcement, where critics of the government can be prosecuted or blackmailed for wrongdoing unrelated to the purpose of the surveillance."**

**Warrant:** Multiple organizations have silenced themselves out of fear of being watched.

Gonsalves, Antone. "Groklaw Shutdown Shows 'Chilling Effect' of NSA Surveillance." *CIO*. Aug. 2013. Web. 1 October 2013.

<[http://www.cio.com/article/738532/Groklaw\\_Shutdown\\_Shows\\_Chilling\\_Effect\\_of\\_NSA\\_Surveillance](http://www.cio.com/article/738532/Groklaw_Shutdown_Shows_Chilling_Effect_of_NSA_Surveillance)>.

**"The privacy concerns that led Groklaw founder Pamela Jones to shutter the award-winning legal news site are understandable given the breadth of U.S. government surveillance of Internet communications, experts say.** In closing the

website on Tuesday, Jones made her last post on the blog a heartfelt goodbye that followed a couple of weeks of soul searching. "The simple truth is, no matter how good the motives might be for collecting and screening everything we say to one another, and no matter how 'clean' we all are ourselves from the standpoint of the screeners, I don't know how to function in such an atmosphere," Jones wrote. "I don't know how to do Groklaw like this." **Jones's dramatic action followed revelations in June that the National Security Agency (NSA) was collecting massive amounts of data from telecommunication and Internet companies.** Leaked to the media by former NSA contractor Edward Snowden, the disclosure has sparked a national debate on whether the scope of the surveillance goes far beyond what the government claims it needs to fight terrorism. After weighing the facts and arguments, Jones decided that the broadness of the snooping compromised privacy to the extent that she was no longer comfortable communicating with readers in and outside of the U.S. Most communications is through email. "My personal decision is to get off of the Internet to the degree it's possible," she said. Groklaw is not the first business to go dark because of NSA-related privacy concerns. U.S.-based encrypted email services Lavabit and Silent Circle were shut down after the owners determined they could not provide the level of secrecy their clients demanded. Julian Sanchez, who focuses on the intersection of technology and privacy as a research fellow at the Cato Institute, said Jones' conclusion "could very well be legitimate," depending on the email discussions. "If the site's sources are engaged in confidential legal communications, they could very well have valid concerns about the security of those exchanges," Sanchez said. **The closing of Groklaw, Lavabit and Silent Circle demonstrate the "chilling effect" NSA surveillance is having on organizations, said Rob Banagale, chief executive and co-founder of Gliph, which provides encrypted text and picture messaging."**

**Warrant:** Free media is key to checking back corruption.

Camaj, Lindita. "The Media's Role in Fighting Corruption: Media Effects on Governmental Accountability." *The International Journal of Press/Politics*. 2012

November. Web. 3 October 2013.

<<http://hij.sagepub.com/content/18/1/21.full.pdf+html>>.

**“The rapidly growing literature on the role of mass media for governmental accountability suggests that a free press is among the most effective mechanism of external controls on bureaucratic corruption and promotion of good governance. It has the potential to curb extortive corruption—when government officials refuse or delay a service to extract a rent, and collusive corruption—where client and bureaucrat have a mutual interest in the corrupt act as in instances of tax evasion (Brunetti and Weder 2003: 1804–805). For extortive corruption, the press provides a platform for voicing complaints. The incentives of exposing collusive corruption lie in opportunities of investigative j006Furnalists and media institutions to achieve fame and larger audiences, as profit-making media firms seek to expose corruption to sell their product (Suphachalasai 2005: 3–4). Besides raising public awareness about corruption, mass media have the potential to help the prosecutorial institutions by investigating and reporting incidences of corruption (Stapenhurst 2000).”**

**Analysis:** This argument is relatively straightforward; the fact that the NSA is doing surveillance that is secret causes people to fear the possibility of prosecution or coercion, and causes them to be silent. What needs to be stressed is the impact; what this system creates a perpetual cycle where if people fear free speech, which is key to preventing corruption, the violation of privacy that already happens, will continue to happen.

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**A/2 – NSA Surveillance Has a Chilling Effect on Speech**

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**Warrant:** Clear and present standard was met; NSA wiretapping stopped 50+ attacks.

Ratnam, Gopal. “NSA’s Alexander Says Secret Programs Stopped Terror Plots.”

*Bloomberg News*. 27 June. 2013. Web. 4 October 2013.

<<http://www.bloomberg.com/news/2013-06-27/nsa-s-alexander-says-secret-programs-stopped-terror-plots.html>>.

**“Two secret U.S. programs used to track telephone calls and monitor Internet use, which were exposed by Edward Snowden, helped stop terror plots around the world, the head of the National Security Agency said. The agency provided Congress with “54 cases in which these programs helped disrupt terror plots in the U.S. and throughout the world,” Army General Keith Alexander said today at a conference in Baltimore. Action to stop potential attacks involved other U.S. agencies, such as the Central Intelligence Agency, the Federal Bureau of Investigation, the Pentagon and the Department of Homeland Security , he said. Defending the surveillance programs that Snowden revealed to newspapers, Alexander provided a regional breakdown, saying 25 terrorist plans had been disrupted in Europe, 11 in Asia and five in Africa. Forty-two instances involved what Alexander called “disruptive plots,” and 12 were related to supporting terrorism. Arrests were made in 50 cases, Alexander said. Snowden, 30, a former employee of Booz Allen Hamilton Holding Corp. (BAH), provided the Guardian and the Washington Post details of U.S. surveillance programs that involved collecting data on calls from U.S. phone companies and monitoring Internet activity involving foreigners believed to be located outside the U.S. and plotting terrorist attacks. Snowden, who fled the U.S. to Hong Kong on May 20, is at a Moscow airport, according to Russian officials, and has been seeking asylum in Ecuador or another country. In 12 of 54 cases Alexander cited, he said the collection of phone data aided the FBI. In 53 of 54 cases, collecting Internet data provided ‘the initial tip,’ he said.”**

**Warrant:** Security is necessary in order for liberty to exist.

Wittes, Benjamin. "Liberty and Security: Hostile Allies." *Hoover Institution*. 10 Nov. 2011. Web. 4 October 2013. <<http://www.hoover.org/publications/defining-ideas/article/99536>>.

"Proponents of more aggressive surveillance justify such steps as necessary and imposing only allowable costs in light of some compelling governmental or societal security need. Opponents criticize them as excessive enhancements of governmental power, which we take at the expense of freedom or privacy. **We seldom stop and ask the question of whether and when our surveillance programs are really coming at the expense of liberty at all or whether the relationship might be more complicated than that—indeed, whether some of these programs might even enhance liberty.** We should ask these questions because the balance metaphor is incomplete to the point of inducing a deep cognitive error. Any crude notion of a "balancing" between security and liberty badly misstates the relationship between these two goods—that **in the vast majority of circumstances, liberty and security are better understood as necessary preconditions for one another than in some sort of standoff. The absence of liberty will tend to guarantee an absence of security, and conversely, one cannot talk meaningfully about an individual's having liberty in the absence of certain basic conditions of security.** While either in excess can threaten the other, **neither can meaningfully exist without the other.**"

**Warrant:** Social Contract justifies the need to restrict freedom for security.

Uzgalis, William. "John Locke." *Stanford Encyclopedia of Philosophy*. 10 July. 2010. Web. 4 October 2013. <<http://plato.stanford.edu/entries/locke/#SocConThe>>.

"Locke is now in a position to explain the function of a legitimate government and distinguish it from illegitimate government. **The aim of such a legitimate government is to preserve, so far as possible, the rights to life, liberty, health and property of its**

citizens, and to prosecute and punish those of its citizens who violate the rights of others and to pursue the public good even where this may conflict with the rights of individuals. In doing this it provides something unavailable in the state of nature, an impartial judge to determine the severity of the crime, and to set a punishment proportionate to the crime. This is one of the main reasons why civil society is an improvement on the state of nature. An illegitimate government will fail to protect the rights to life, liberty, health and property of its subjects, and in the worst cases, such an illegitimate government will claim to be able to violate the rights of its subjects, that is it will claim to have despotic power over its subjects.”

**Warrant:** US v. Schenck shows that free speech can be restricted when a clear and present danger exists.

“A Clear and Present Danger.” *Constitutional Rights Foundation*. Web. 4 October 2013. <<http://www.crf-usa.org/america-responds-to-terrorism/a-clear-and-present-danger.html>>.

“The government accused Schenck of illegally interfering with military recruitment under the espionage act. Schenck admitted that he had sent the circulars, but argued that he had a right to do so under the First Amendment and was merely exercising his freedom of speech. The issue found its way to the U.S. Supreme Court in the case of Schenck v. United States, 249 U.S. 47 (1919). It was the court's first important decision in the area of free speech. Justice Oliver Wendell Holmes wrote the opinion of the unanimous Court, which sided with the government. **Justice Holmes held that Mr. Schenck was not covered by the First Amendment since freedom of speech was not an absolute right. There were times, Holmes wrote, when the government could legally restrict speech. According to Justice Holmes, that test is "whether the words...are used in such circumstances as to create a clear and present danger."** Holmes said that in Charles Schenck's case the government was justified in arresting him because, "When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be

**endured so long as men fight and that no Court could regard them as protected by any constitutional right."** In the Schenck case, the highest court in the nation ruled that freedom of speech could be limited by the government."

**Analysis:** The answer here is relatively simple. The government is justified in having this impact in order to defend national security as a whole. Easy.